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THE CHILD AND THE STATE

Volume II

THE DEPENDENT AND THE
DELINQUENT CHILD

THE CHILD OF UNMARRIED PARENTS

Select Documents, with Introductory Notes

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PREFATORY NOTE

The reprinting of this volume has made possible a few minor changes about which a brief explanatory note is necessary. My sister had made some notes in the book that she used in her classes, indicating certain changes that she wished to make. In addition, one new document (Part I, Sec. I, No. 20) has been inserted in place of two old documents (Nos. 20-21). Although the inserted document appeared after my sister's death, it has been taken from a report in the preparation of which she had been much interested and which she believed would be an important contribution to this field.

A few changes have also been made in the Introductory Note to Section IV, Part I, not only because her own notes suggested certain changes but also because it was necessary to indicate the 1939 amendments to Title IV of the Social Security Act, as well as to substitute recent data for those formerly used.

E. A.

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SECTION I

THE DEVELOPMENT OF PUBLIC CARE FOR DEPENDENT CHILDREN

INTRODUCTION

Some kind of public provision for dependent children had to be made by the earliest colonists. Sickness, death, Indian massacres, and other misfortunes left orphans and dependent families to be cared for out of the very limited resources of the little settlements. In a pioneering community where money is very scarce and there is little wealth of any kind help is usually generously extended to neighbors whose needs and resources are well known, but there is also quick condemnation of those who do not bear their share of the burdens and little sympathy for those who cannot meet with courage the challenge of the wilderness—who lack the temperament and resourcefulness the pioneer needs. While the colonial attitude toward the dependent is often described as harsh and cold, a study of New England town records shows the selectmen were not without sympathy or the desire to help those in need.¹ They sometimes voted assistance to the poorer members of the community in the building of homes or sinking of wells,² and long case records of the assistance given to widows and families can be put together from the minutes of their meetings.³ In addition to the neighborly help the colonists extended they were trying to apply the principles and practices of the English Poor Law to New World conditions, and they doubtless accepted the prevailing view that poverty was usually the fault of the poor and desired to prevent in their new settlements what they thought of as the pauperism of the Old World.

The apprenticeship system as a method of providing for depend-

¹ Margaret Creech, *Three Centuries of Poor Law Administration* (University of Chicago Press, 1936), pp. xiv and xv.

² Robert W. Kelso, *The History of Public Poor Relief in Massachusetts, 1620-1920* (Boston: Houghton Mifflin Co., 1922), p. 105.

³ Creech, *op. cit.*, Appen. IV.

ent children, which has already been discussed,¹ drew no criticism until the end of the nineteenth century. But from the earliest periods not all poor children were apprenticed to earn the care they received. There was some home relief to families in settlements too small for an almshouse, and dependent families were frequently auctioned off to the lowest bidders sometimes with a provision in the contract that the children were to have the privilege of going to school in the winter.²

An interesting case of selling children at auction under the poor-law method of "public vendue" will be found in the account of the children of James W. Whool in the "Records of the Town of Shapleigh, from 1796 to 1801." The Town Records contain accounts of the auctioning of the different children to the lowest bidder for different years, and finally on March 8, 1801, the following note appears: "Jane Whool's boy set up at vendue to the lowest bidder till he is twenty-one years old, and bid down to nothing and bid up to one dollar and a half and struck off to Elisha James."³ The boy had evidently grown into a person able to work and worth paying a little to keep. As the towns grew larger almshouses were built and orphan children were consigned to live with the aged, the insane, the feeble-minded, and the diseased. They were usually cared for by the older inmates and taught, if at all, by ignorant employees; their physical needs were neglected, and their mortality was very high. Those who survived knew only the life and routine of a pauper institution.

It is not possible here to discuss general public relief, but it should be noted that without adequate and well-administered public assistance experience shows that children will be unnecessarily and permanently separated from their parents during temporary emergencies. Until the last decade the number of children cared for by relief in their own homes has not been available; but public relief,

¹ *The Child and the State*, I, "Apprenticeship in the United States," pp. 189-255.

² Kelso, *op. cit.*, pp. 108 (n. 3) and 109.

³ See the "Shapleigh Town Records" (ed. by the Benapeag Chapter D.A.R. Typed copy at Maine Historical Society, Portland, Book I, pp. 47, 125, 132, 144, 148, 149, 154, 168). Cited by Elizabeth K. Morrison in a *History of Poor Relief in Maine*, to be published by the University of Chicago Press.

required by state statute and administered by the local poor authorities in most parts of the country,¹ has probably at every period cared for more dependent children than have been provided for under the special forms of care for dependent children which are here considered. For example, in 1823 there were in the Bellevue almshouse in New York City five hundred and fifty-three children, but the estimated number of families on outdoor relief was four thousand.²

During the first quarter of the nineteenth century the inadequate and carelessly administered outdoor relief and the pauperism it was believed to perpetuate was the subject of much criticism; and almshouse care, particularly when a work program was provided, was regarded as greatly superior to outdoor relief. In the 1821 *Report of the Massachusetts Committee on Pauper Laws* of which Josiah Quincy was chairman, four methods of care used at that time were said to be (1) letting them out to the lowest bidder in the families at large; (2) letting them all out to the person submitting the lowest bid for their care; (3) outdoor relief; and (4) almshouse care.³ Quincy's Committee concluded that outdoor relief was the worst and almshouse care the most economical and best method of relief, especially when it provided opportunities for work. J. V. N. Yates, the secretary of state in New York, who made a report to the legislature on the subject of relief in 1824, was perhaps even more emphatic in his condemnation of relief to the poor in their own homes and more enthusiastic as to the possibilities of the alms-

¹ In some large urban centers in the East, among them New York City, Philadelphia, and Baltimore, public relief was abandoned after 1878, and family relief was given by private agencies until the depression period from 1929 to 1933 demonstrated the necessity of public aid and federal and state funds were provided. See Amos G. Warner, "Public Relief of the Poor in Their Homes," *American Charities* (rev. ed.; New York: Thomas Y. Crowell & Co., 1908), chap. vii.

² Homer Folks, *The Care of Destitute, Neglected, and Delinquent Children* (New York: Macmillan Co., 1902), pp. 13-14.

³ *Report of the Massachusetts Committee on the Pauper Laws in 1821*, of which Josiah Quincy was chairman, in S. P. Breckinridge, *Public Welfare Administration in the United States: Select Documents* (Chicago: University of Chicago Press), Part I, Doc. 2, p. 35.

house.¹ This was undoubtedly the prevailing viewpoint at this time, and it is not surprising that almshouses and their inmates increased rapidly for the next two decades. By 1848 there were 1,054 New York City children in the almshouse on Randall's Island, to which they were removed from Long Island Farms as they had been at an earlier period from Bellevue.² Philadelphia had for a time a separate almshouse for children, but this was abandoned in 1835 and the children moved into one wing of the Blockley almshouse. The practice of committing dependent children to this institution continued until 1883, when Pennsylvania prohibited by statute almshouse care for children. With local variation the Massachusetts, New York, and Pennsylvania use of almshouses to provide care for dependent children was typical of the states generally.

Approximately thirty years after the glowing report by Yates of the almshouse system and what its adoption would accomplish, a "Select Committee" appointed by the New York Senate in 1856 to investigate all the charitable institutions of the state reported the poorhouses to be "the most disgraceful memorials of public charity," and that the evidence obtained showed "filth, nakedness, licentiousness, general bad morals . . . gross neglect of the most ordinary comforts and decencies of life," and that they were "for the young the worst possible nurseries."³ This report did not, as one might expect, at once close the almshouses to children. On the contrary, the number cared for in this way increased, so that in 1867, when the State Board of Charities was created, there were two thousand three hundred children in the almshouses of New York State as compared with one thousand three hundred in 1856. The Board at once turned its attention to this problem and, as it was without authority, sought to induce the counties to make other provision for the almshouse children. William Pryor Letchworth, a

¹ "Report and Other Papers on Subject of Laws for Relief and Settlement of Poor" (*Assembly Journal*, January, 1824, Appen. B, pp. 289-99; *Senate Journal*, Appen. A); reprinted in *Thirty-fourth Annual Report of the State Board of Charities of the State of New York*, I (1900), 939-63. Conveniently found in Breckinridge, *op. cit.*, pp. 39-54.

² Folks, *op. cit.*, p. 21.

³ This report is conveniently found in Breckinridge, *op. cit.*, pp. 149-69. Of special interest here is the discussion of the condition of the children in the almshouses (p. 154) and of the superiority of the orphan asylums (pp. 157 and 158).

leading member of the board for many years, concluded that persuasion would never accomplish the desired result. Prohibition by the state of this type of care was, he considered, the only remedy, and more than anyone else he was responsible for the passage of the Act of 1875 (p. 71) by the New York legislature.

Bad as the almshouses were, this type of care was usually better than the venduing or auctioning of families for care. Moreover, it probably was not possible at that time to develop a well-administered system of outdoor relief or special care for children. As so often happens, although a step forward at the time they were established, almshouses long outlived their usefulness. The high death-rate, the outbreaks of contagious disease, the incompetent staff, and the generally neglected and unhappy condition of the children reported by individuals and special committees in one state after another led to the demand that this method of caring for dependent children be abandoned. Reform came slowly in view of the evidence of the serious conditions in the almshouses, because public funds had been invested in land and buildings and because of the fatal ease with which children and families could be placed in an almshouse. Moreover, as the number of children in almshouses was large, the problem of what to do with them if this form of care were abandoned was one not easily solved. It was not until the last quarter of the nineteenth century that the laws prohibiting this type of care were passed.

Private institutions and agencies were increasing at this time, but they could care for relatively few children. Only four institutions for dependent children had been established by the end of the eighteenth century—the Ursuline Convent in New Orleans (1727), which was a refuge for many orphans after the Indian Massacre of 1729, the Bethesda Orphan Home in Savannah, Georgia (1738) (p. 24), the Municipal Orphanage at Charleston, South Carolina (1790) (p. 29), and St. Joseph's Orphanage in Philadelphia (1798). Early in the nineteenth century the New York City Orphanage was incorporated and soon received public aid (p. 33). Examples of some other nonsectarian and sectarian institutions which sought and in many states received public aid are given in the documents. Public subsidies were at first given in lump-sum appropriations to

only a few institutions, but later under the contract per capita method of payment the subsidy system was greatly extended and the number of these subsidized institutions and of children cared for by them increased rapidly during the last half of the nineteenth century. They were usually of the forbidding congregate type in which the individual needs of the children were given little consideration, and long hours of work with little time devoted to school and less to recreation were the rule. But unscientific and inadequate as was the care given in these institutions, it was, of course, much better than the almshouses offered.

Agencies that arranged for free foster-home care also developed during the years immediately before and following the Civil War. The New York Children's Aid Society founded by Charles Loring Brace in 1853 specialized in the placement of children on the farms of the Middle West and in upstate New York and did much to popularize this method of care.¹ Other early child-placing societies were the Henry Watson Children's Aid Society, Baltimore, 1860; Boston Children's Aid Society, 1864; Brooklyn Children's Aid Society, 1866; New York State Charities Aid Association, 1872; Children's Aid Society of Pennsylvania, 1882; Connecticut Children's Aid Society, 1892. The state "Children Home Societies" movement which began in Illinois in 1883 spread rapidly. These state-wide child-placing agencies, originally fostered by the Protestant churches, were finally established in thirty-six states.² For many years all these agencies, as Hastings Hart had pointed out, received children with little investigation and placed them with little knowledge of the foster-parents.³

Thus two systems of care for dependent children—foster-home and institutional—had been developed but not perfected when in the last quarter of the nineteenth century the problem of what to

¹ See section on Interstate Placement, below, p. 133.

² The only states in which state-wide societies were not established were Alabama, Arkansas, Connecticut, Indiana, Louisiana, Maryland, Massachusetts, Nevada, New Hampshire, New York, Rhode Island, and Vermont. In all these except Arkansas, Louisiana, Rhode Island, Indiana, and Nevada, there were children's aid societies in the principal cities by 1923 (*Foster-Home Care for Dependent Children* [rev. ed.; U.S. Children's Bureau Pub. No. 136; Washington, D.C., 1926], p. 4).

³ *Ibid.*, p. 3.

do with the children removed from almshouses was before the states. Four different methods were adopted. Typical examples of these are found in Massachusetts (p. 36), Ohio (p. 44), Michigan (p. 51), and New York (p. 65).

In Massachusetts, where the state had assumed the care of the poor who were without settlement and there were in consequence state as well as town almshouses, the state was faced with the decision of what to do with the children in its own almshouses. Under the leadership of Samuel Gridley Howe and Frank B. Sanborn, of the newly created Board of Charities of Massachusetts, almshouse care was abolished in 1879 (p. 42).¹ Prior to this, a so-called Primary School had been established at the State Almshouse in Monson (1866), and placing-out of the children from this center had been begun (p. 36). In 1895 the Primary School was closed,² the state having put into effect a foster-home care system for all the dependent wards of the state. But there remained large numbers cared for in local almshouses. To meet this situation a state law was passed in 1887 which required the overseers of cities to place dependent children in private families and that if the overseers in any city except Boston failed to remove the children from the almshouse the State Board of Charities was to place them at the expense of the city (p. 43). This law was amended in 1893 to include towns as well as cities (p. 43).³ Thus a state and local system of foster-home care became the Massachusetts solution of the problem of care for its dependent children. Private agencies and institutions also cared for some of the dependent children, but the subsidy system was little used in Massachusetts. The United States Census of 1933 showed that of all the children under care away from their own homes the public agencies were directly responsible for 68.2 per cent, and of the children cared for by private agencies only 1 per cent was receiving any

¹ *Massachusetts Acts and Resolves, 1879*, chap. 103, applied to children over four years. The mentally or physically defective or children under eight years of age whose mothers were inmates of the almshouses were not included.

² *Massachusetts Acts and Resolves, 1895*, chap. 428.

³ The law was further amended in 1905 to require (1) the placement of all children over two years (it had been four) in private families by overseers and (2) to permit the retention in almshouses of children under five years (it had been eight) if their mothers were also inmates (*Massachusetts Acts and Resolves, 1905*, chap. 303).

support from public funds.¹ The system of foster-home care has, one might say, triumphed over institutional care in that state. The census taken in 1933 showed that of a total of 12,368 children under care on December 31, 2,472 were in institutions and 9,896 in either free homes (1,324), boarding-homes (7,952), or work or wage homes (620).² There were, however, in 1923, when the last census of almshouses was taken, more children still in the almshouses of Massachusetts than in any other state.³

New York followed a very different policy from Massachusetts. During the early discussion of what should be done with the almshouse children, Charles Loring Brace, secretary of the New York Children's Aid Society, offered to place them all in homes in the Middle West. But as these families were usually Protestant and large numbers of the children in the New York almshouses were the children of Catholic immigrants, there was much objection to this solution in New York⁴ as there would have been in the Middle West if the plan had been carried out.

New York State when it prohibited almshouse care did not develop a program of state care. It had given up in 1874 the practice of granting state subsidies to children's institutions (p. 113), and in 1875⁵ it prohibited the care of children in almshouses (p. 71), thus leaving to the local communities the problem of what to do with the almshouse children. Under the law they had the choice of providing subsidies to private agencies or originating some method of public care. With sectarian and nonsectarian agencies pressing for assistance and the law providing that the children must be placed in

¹ Agnes K. Hanna, "Dependent Children under Care of Children's Agencies: A Review of the Census Findings," *Social Service Review*, X (June, 1936), 262; and U.S. Bureau of the Census, *Children under Institutional Care and in Foster Homes, 1933* (Washington, D.C., 1935), Table 44, p. 84, and Table 43, p. 61.

² *Ibid.*, Table 4, p. 8.

³ U.S. Bureau of the Census, *Paupers in Almshouses, 1923* (Washington, D.C., 1925), Table 61, p. 50. Massachusetts had on January 1, 1923, 367 children under fifteen in its almshouses. The state with the next largest number was Pennsylvania with 181.

⁴ For a Catholic discussion of this issue, see Francis E. Lane, *American Charities and the Child of the Immigrant* (Washington, D.C.: Catholic University of America, 1932), chap. iv.

⁵ *Laws of New York, 1875*, chap. 173, applied to children over three and under sixteen years of age.

institutions of the religious faith of their parents, the subsidy system with per capita payment for the children committed to the private institutions by the courts or the local public relief agencies became the general method of care adopted by the local communities. With public support thus assured the number of private institutions multiplied and the number of children in these institutions increased by leaps and bounds. The fact that children were indiscriminately committed to institutions in New York City by local magistrates on the ground that they were "without proper guardianship" or delinquent was in part responsible for this increase.¹ As in other states, judges, with little or no appreciation of other types of provision that might be made, found it fatally easy to place children in an institution and then forget about them.

In 1894 an amendment to the New York State Constitution² provided that the local governments should not pay for the care of dependent children in a private institution which was not certificated for this purpose by the State Board of Charities. Under this law no institution was to be given a certificate by the Board which did not observe the rules it laid down. Unfortunately, the State Board failed to develop the policy of progressively raising standards in the granting of these certificates. An investigation made in 1914 and 1915 when John A. Kingsbury was Commissioner of Charities for New York City showed shocking conditions in some of the certified institutions. The Strong³ Report to the Governor in 1915 held the State Charities Board responsible for what was gross neglect of the welfare of the children in some of the institutions it had certified (p. 113). While this led to a bitter controversy at the time, many pri-

¹ Children were committed by local magistrates of the other counties of New York. Ruth Taylor reports that in 1914 in Westchester County ninety-four police justices of the peace and city-court judges and at least thirty-two town overseers of the poor and commissioners of charity could commit children to private institutions as public charges (U.S. Children's Bureau Publication No. 107, p. 111). For Miss Taylor's account of the steps by which this system was greatly changed between 1914 and 1922, see *ibid.*, pp. 111-43.

² Art. VIII, sec. 14.

³ Charles H. Strong, a prominent New York lawyer active in the "Good Government" movement, was appointed by Governor Whitman in 1915 as a commissioner to examine into the management and affairs of the State Board of Charities, the Fiscal Supervisor, and certain related boards and commissions.

sometimes paid to child-caring agencies in Michigan, in 1933, 69.1 per cent of the children under care were wholly supported by private agencies. The census of 1923 showed only 29 children in almshouses in Michigan.¹

In another group of states of which Ohio is an example, instead of establishing a state program for the care of dependent children, the legislature authorized and the State Board of Charities encouraged the establishment of county orphanages (p. 44). Ohio adopted this plan because of the interest of the state in the pioneer efforts of Catherine Fay, who founded a small institution for dependent children near Marietta in 1857. Her objective was removal of children from almshouses, but her resources were inadequate even for those in her own county, and she began a campaign for a state law authorizing county orphanages in 1864.²

While it was argued at that time that the numbers committed to a state institution for care would be much larger than those committed to an institution which was supported by local taxation, this proved not to be true. The states with county orphanages accumulated large numbers of dependent children who needed only temporary assistance in their own homes.

County homes still flourish in Ohio. In 1933 the census reported 56 county homes caring for 8,014 children, while 11 county child welfare boards had under care 2,784 children, and 684 were in the State Soldiers and Sailors Orphans' Home. Of 18,962 children under care away from their own homes in that year, 46.4 per cent were receiving no support from public funds.³ As for the almshouse problem, in 1923, 88 children under fifteen years were still in almshouses.⁴

In other states by similar methods progress has been made in the

¹ U.S. Bureau of the Census, *Paupers in Almshouses, 1923*, Table 61, p. 50; and *Children under Institutional Care and in Foster Homes*, Table 4, p. 8; Table 43, p. 61; Table 44, p. 87.

² S. J. Hathaway, "Children's Homes in Ohio," *History of Child Saving in the United States at the Twentieth National Conference of Charities and Correction in Chicago, June 1893. Report of the Committee on the History of Child-Saving Work* (Boston, 1893), pp. 131-32.

³ Hanna, *op. cit.*, p. 262; U.S. Bureau of the Census, *Children under Institutional Care and in Foster Homes*, Table 4, p. 8; Table 43, p. 61; Table 44, pp. 105-6.

⁴ U.S. Bureau of the Census, *Paupers in Almshouses, 1923*, Table 61, p. 50.

removal of children from almshouses, but these outmoded institutions still receive children. The last census of the almshouse population taken in 1923 showed 842 children under five years of age as compared with 3,850 in 1880, 538 from five to nine years of age as compared with 3,052 in 1880, and 516 ten to fourteen years of age as compared with 1,983 in 1880.¹ The increased funds for aid to dependent children and child welfare services under the Social Security Act should wipe out completely this method of care.

Reference has been made to the problems created in New York State by state or local payments to private institutions for the care of dependent children. There and elsewhere the subsidy system was begun before public programs of child care were developed, and it is still widely used.² While hospitals have received larger amounts in subsidies than any other type of institution or agency, public aid to children's institutions and agencies has been much more widespread. Most of the states drifted into the policy of aiding private institutions because they were unwilling to accept responsibility for the care of the dependent, and because it seemed to be cheaper to grant some aid to private institutions than for the state to provide public care. Also in the days when any form of public relief was thought to carry a stigma which private assistance did not, it was considered by some a superior form of care. By the end of the nineteenth century, leaders in social welfare began to appreciate the difficulties inherent in the subsidy system and that, once started, it was very difficult to abandon. Private agencies increased and expanded when public funds became available, and as the money was easily obtained they accepted children without sufficient investigation of the family needs and resources and kept them permanently or long after they could have been returned to their families. This was costly to the taxpayer, but even more important, large numbers of children were deprived of normal home life by this reckless policy. Having assumed responsibilities which they could not meet out of

¹ *Ibid.*, Table 7, p. 10.

² See Warner ("Public Subsidies to Private Charities," *op. cit.*, chap. xvii), for an earlier, and Arlien Johnson (*Public Policy and Private Charities* [University of Chicago Press, 1931], pp. 39-51), for a more recent account of the subsidy system in the United States.

available private resources, the institutions then became unwilling to give up public aid particularly when their boards and executive officers thought numbers served was the test of their usefulness. They argued also that the private institutions had assumed the care of dependent children before the states had recognized its responsibility, they had expanded under the subsidy system, and withdrawal of grants would therefore be unfair.

While the state constitutions of a number of states prohibit grants to private institutions, especially sectarian or religious institutions, the state legislatures may nevertheless authorize payments to such agencies by counties or cities, and sometimes a particular type of aid is not included in the constitutional prohibition granted by the state.¹ California, on the other hand, specifically provided for state grants to orphanages and other institutions for dependent children in its first constitution (p. 106), and the policy then adopted has continued to the present time. Maryland affords an outstanding example of subsidy by lump-sum appropriation to agencies and institutions by the state legislature (p. 108). This system has been repeatedly challenged by the Maryland Board of State Aid and Charities,² and the contract system within the lump-sum appropriation has been finally adopted. In Illinois the child-placing agencies sought and secured the same system of county payments for children committed to their care as had been used for children committed to institutions (p. 104). Extracts from a good analysis of the difficulties created by the subsidy system in North Dakota are given in the documents (p. 110).

The contract system with payment on a per capita basis, often referred to as specific payments for specific services, is, if the state or local department of public welfare is given authority for effective control of the standards of care provided, to be preferred to the system of lump-sum appropriations by legislatures or county boards. For one thing, the numbers placed under contract can be gradually reduced as public provision for care is made. But the New York

¹ Johnson, *op. cit.*, p. 40.

² The *Eighth Biennial Report of the Maryland Board of State Aid and Charities* (1914-15) includes (pp. 7-40) an excellent report of the then existing subsidy system in Maryland and other states.

experience demonstrated the dangers of the contract system when several branches of the government are authorized to commit children and supervision of the agencies is timid and ineffective.

The question to be faced is whether the state should participate in a private-agency program by any form of money grants or payment. Some of the objections are that private agencies are unable or unwilling to take all the children who need care away from their own homes and a public program must therefore be developed. This is difficult to do once the subsidy system is established. The private agency is free to perform a really useful function only if it supplements the program of the public agency and does not attempt to serve large numbers. If a private agency accepts public funds, it should be subject to public control and not merely public supervision; as control of the agency is in the hands of a private board which raises a part of the money for its support there is divided responsibility. A subsidized private agency is in fact neither public nor private.

But whatever the arguments against the system, it is still widely used. The pressure of church institutions and influential board members of nonsectarian institutions will doubtless prevent its abolition for many years to come. Unfortunately the pressure that retains the system also usually makes the enforcement of adequate standards extremely difficult.

The responsibility of the state to know how all its dependent children are cared for was not recognized and was little discussed until the end of the nineteenth century. The appeal of children is so great that the unscrupulous sometimes use them as a pretext for securing funds, and well-meaning people, ignorant of methods of child care, undertake the care of children with inadequate financial support and with little or no understanding of the problems of child care.

At the meetings of the National Conference of Charities and Correction, discussion of the need and the results that might be expected from state supervision of child-caring agencies began during the nineties.¹ The case for state responsibility was well put at that time although the administrative problems were not fully appre-

¹ See especially Homer Folks, "State Supervision of Child Caring Agencies," *National Conference of Charities and Correction Proceedings*, 1895, p. 209.

ciated. State supervision, it was pointed out, would mean the correction of positive evils and at the same time make available to each agency or institution the experience of other agencies. It was pointed out that the state should know where its dependent children are, its agents should visit and inspect institutions and agencies at regular intervals—including local public as well as all private agencies—and both should be required to make full reports to the state. Usually welcomed and even demanded by the best private agencies, state supervision was opposed by the poorer agencies and by many individuals who thought a private charity sponsored by a church or one which included the names of leading citizens on the list of board members was, of course, well administered. But in spite of such opposition great progress has been made in bringing private agencies under state supervision. The requiring of reports to the state welfare agency, the right of inspection and investigation, approval before incorporation (p. 123), and an annual licensing system (p. 125) have been the devices used to insure that all the private agencies provide reasonably adequate care.

Approval of the agency and its program before incorporation was an early and useful step in state supervision of the agencies and is still the limit of state control in some states. By requiring approval by the department of public welfare before the incorporation of an agency, the state can see that new institutions are not incorporated when existing facilities are adequate or exceed the need and can make sure that none is launched under irresponsible sponsorship and with inadequate funds. But this does not insure the character of the subsequent work of the agencies. Some which begin as promising pioneers later deteriorate or acquire complete resistance to progressive ideas. Revocation of charters by court procedure is possible but presents great difficulties. Courts do not understand the importance of standard methods and procedures; great names on boards or the fact that an agency is maintained by a church seems to them to guarantee efficient management. In any event revocation can be resorted to only when institutions or agencies are guilty of serious neglect and mismanagement. What is needed is a method of securing progressive improvement in institutions or agencies whose practices do not measure up to the best standards. For this

an annual licensing system has proven the most useful device. Revocation of a license for which annual renewal is not required presents the same difficulties as revocation of a charter. When an agency must seek each year a renewal of its license, a routine review of performance by the department is possible. Licenses can be refused or renewed on condition that certain requirements are met. This is much simpler for the department and the agency than a public trial. A department of public welfare in refusing to renew a license should not be arbitrary in its decisions, and the right to a fair hearing with an opportunity to answer charges should be accorded.¹

Boarding-homes for children under two or three years of age were the first to come under the licensing system. There were more serious problems involved in the care of these infants, and a very high death-rate and the baby-farm scandals made control clearly necessary. As boarding-homes for older children were included in the licensing system, there has been in some states an unnecessary amount of inspection and licensing. If an agency is licensed and supervised there is no reason for licensing and inspecting the individual boarding-homes it uses. The state should have the right to visit any foster-home and order the removal of a child if it finds the home unsuitable. In addition to reading case records visits can be made to determine the character of the work a private agency or a local government is doing. But a double system of visitation is unnecessary, tends to become routine and casual, and hence much less useful than a more careful study of random samples of the agency's work.

The supervision now being done by the best state agencies is a great improvement over former standards and methods of work. The task is never completed. Standards change as new methods of organization and treatment are developed, and agencies and institutions vary greatly with changes in the administrative staff. The state department of public welfare should assume that the task is a progressive one. Annual licensing makes this possible with a minimum of friction if it is skilfully and, as necessity requires, courageously used.

¹ In this connection the case involving the denial of a license to a maternity home is of interest (see below, Part III, Document 14).

That the laws of many states do not yet give state departments adequate authority and staff for the performance of the duty of insuring proper care of all dependent children, a study of the state statutes reveals. By 1938 thirty-seven states had adopted a licensing system for child-placing agencies,¹ and in all but six of these the statute required that the license must be renewed annually.² Institutions for children were required to secure a license in thirty-six states, and only two of these did not require that it be annually renewed.³

Mother's aid or aid to dependent children in their own homes since 1911 is discussed in a separate section. This program together with workmen's compensation, better wages, and more adequate general public relief has changed the role of the private and public agencies and institutions for the care of children. Children are now rarely removed from parental care on the ground of poverty alone, and as the pressure of numbers has not increased, the standard of care given children by placement agencies and institutions has greatly improved. This has been rendered more necessary as an increasing proportion of children cared for away from their own homes now come from families in which hereditary and environmental factors make scientific care of the children more necessary.

The long controversy over institutional and foster-home care has been resolved in favor of the latter, as the child-placing agencies have greatly improved their standards and techniques since 1875. Although children's institutions are caring for a very large number of children, the percentage of children in foster-homes has steadily although slowly increased. The old congregate institutions in which

¹ For an analysis of state legislation in 1935, see Gladys G. Fraser, *The Licensing of Boarding Homes, Maternity Homes, and Child Welfare Agencies* (University of Chicago Social Service Monographs, 1937).

² The states that by June, 1938, had no licensing system were Colorado, Idaho, Kentucky, Massachusetts, Mississippi, Nevada, New Jersey, New Mexico, New York, Pennsylvania, and South Carolina. The six states that did not require an annual license were Georgia, Maine, Vermont, Connecticut, New Hampshire, and Montana. In South Dakota the law has never been put into operation.

³ The states that did not require a license for children's institutions by June, 1938, were Colorado, Idaho, Kentucky, Massachusetts, Mississippi, Nevada, New Jersey, New Mexico, New York, Pennsylvania, South Carolina, and Utah, while Arkansas and Georgia did not require annual renewals of the license. South Dakota's law is inoperative.

hundreds of children were herded together and received no individualized care are disappearing, but that any still remain is to be greatly deplored.

Provision for federal grants-in-aid for state child welfare services under the Social Security Act is making available a more adequate staff for the children's divisions or bureaus in state departments of public welfare. This makes possible better administration of the responsibilities assumed by the state as well as assistance in the development of local resources. The whole theory of the role of the state and county and the private agency in the child welfare field is now being reviewed. Unquestionably the tendency is to increase the number of children directly cared for by the public agencies. This does not mean that the usefulness of the private agencies is ended. While they will probably no longer be of such importance from the standpoint of the numbers of children for whom they will be asked to provide care, if they select carefully their fields of service and emphasize quality of work rather than numbers cared for, they will serve a very useful purpose as research laboratories in which new methods of care for special types of children can be developed. Equally important, because of their position and experience the private agencies can perform a great service to children by interpreting to the public the work and the needs of the public agencies and demanding that the level of care by the public agencies be progressively raised to meet advancing standards.

GRACE ABBOTT

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THE DEVELOPMENT OF SPECIAL CARE FOR CHILDREN BEFORE 1900

I. A Colonial Case History

WATERTOWN RECORDS COMPRISING THE FIRST AND SECOND BOOKS OF TOWN PROCEEDINGS WITH THE LANDS, GRANTS AND POSSESSIONS, ALSO THE PROPRIETORS' BOOK AND THE FIRST BOOK AND SUPPLEMENT OF BIRTHS, DEATHS AND MARRIAGES,¹ VOL. I

All a publike towne meeting apō the 8th of Dece: 1656: Ordered y^t John Baall be warned to the next towne meeting to make knowne his condicion . . . [p. 48].

Dece: the 11th meeting of the 7 men: John Baall apearng, it is ordered y^t Capt Masan is to Joyne with Brother Baall in putting forth two of his children to Brother Pearce, as allso one other child to such as may be thought fitt to take the same . . . [p. 49].

Dece: the 9th (56): These wittnes y^t Richard Gale, haue couenanted to take, the daughter of John Baall, Saraih Baall abought the age of 2 yeares, in consideration thearof, the s^d Gale is to haue the child for fower yeares, & the s^d Ball is to find the sd Sarah necessary cloathing for 3 yeares of the sd 4, as allso to pay the sd Gale six pounds at psent of Currant pay acording to country pay, and at 2 yeares end the sd Baall is to giue the sd Gale, six pounds more & the last yeare of the fower the sd Gale, is to prouide for the sd Child, conuenient cloathing. It is allso agreed by theire mutuall consent for security of the other six pounds, the sd Baall doth ingage his home lott, for the payment thearof, & at the time when it should be p^d, for defect thearof, the s^d land shall be sould & the six pounds to be p^d out of the same, & the remainder returne to the s^d John Baall the true meaning is, y^t soe much of the land upon a dew aprisall shall be sould as shall pay the six pounds.

Dated this 3^d of January (56): These are to testifie, y^t John Baall wth the consent of the select men, hath putt two of his children as apprentices vnto John pearce Senio^r vntill y^e come to the age as the law prouides, yt is to say, John the son of John Baall, vntill he come, to the age of 21 yeares, in w^{ch} time the sd John pearce, is to

¹ Prepared for publication by the Historical Society (Watertown, Mass., 1894).

find him sufficiency of meate drinke & cloathes, & the aboue named John Baall is to obey all those lawfull comands giuen by the sd John pearce & his wife, at the end of his tearme, John pearce is to giue John Baall, a Loom fitted to fall to worke, and double apparrell, wth the trade of weauing, he is all to instruct him, & to learne him to read the English tongue, & to teach him & instruct him in the knowlege of God, & concerning the other child w^{ch} is a maide child of the age of 5 yeares, she is to be as an apprentice, vntill she come to the age of eighteene yeares, except the sd John pearce & his wife dep^t this world before the time pfixed, that then the sd Marie shall be free, but if they all liue then the sd Marie is to rece of the sd John pearce her granfather or grandmother, a bible & double apparrell, & in the time of her aprentisshepe she is to be brought vp to reade the english tongue, & instructed in the knowleg of God, in wittnes whereof y^e haue sett to there hands [pp. 49-50].

All a meeting of the Select men upon the third of Febr: 1656: It is ordered y^t Capt. Masan wth o^r Brother Bearsto doe goe to Sister Baall, and there to acquaint her y^t it is the mind of the Select men, y^t she sett her selfe to the Carding of two Skaines of Cotton or sheeps wooll & her daughter to spin it, wth other Business of the family & this to be her daily taske, the w^{ch} if she refuse, she must expect, to be sent to the howse of correction [p. 50].

All a meeting of the Select men at the howse of Leauestenants Beeres upon the 20th of Sept: (58): It was agreed by the Select men wth Joseph mors, concerning the child of John Baall, the age of 3 yeeres, y^t the sd Josep doth couenant to take the sd child, for 2 yeares, for w^{ch} the sd Select men are to giue him 18^d p weeke, the w^{ch} some is to be p^d fower pounds by the aboue named John Baall, & the towne is to satisfie the rest y^t it amounts vnto according to the agreement aboue mentioned for the tearme of 2 full yeares: & if in case the child dyes before the 2 yeares be expired, the sd Josep mors, will abate of the sd some for soe many weekes as fall shortt of 2 yeares, except some extreordinary hand doe apeare by sicknes upon the child, and if in Case it apearcs y^t the aboue named John Baall be able to pay the whole some of 18^d p weeke for the 2

yeares, he doth ingage to satisfie it & free the towne of the sd charge, wittnes there hand,

the marke of
JOHN X BAALL
JOSEPH MORS

It is agreed in the psence of the Select men, betwixt John Baall & Anthony white, y^t the sd John Baall doth putt his child of one halfe a yeare ould, to be kept for one yeare vnto the sd Anthony white in consideration thearof, the sd Baall is to giue the sd white the some of eight pounds, to be pd p^t in a cow apou an aprisall, & p^t in the rent of the sd Baalls land, & for the remainder of the some of eight pounds, he doth binde ouer his howse & lands to the sd Anthony, for the satisfaction theareof witness there hands

the marke of
JOHN X BAALL
the marke of
ANTHONY X WHITE [pp. 56-57].

A meeting of the Select men att the howse of Tho. Hastings, Noue: the 6th (60): One of John Baalls Children was Bound out as an apprentice to Joseph Mosse, & hath a writing theareof, the select men wittnesses [pp. 66-67].

At a meeting of the select men at Isaak Sternes his House January the 18th 1669: Ordered that John Bigullah shall agre with John Balle the younger a bought Edward Sanderson his Daughter what wagis he shall giue her for a yeers servis according to his best Description for the provideing for her such things as may be for her clothing as comfortably as may be [p. 98].

2. The Establishment of the Bethesda Orphanage in 1738¹

BENJAMIN FRANKLIN ON WHITEFIELD'S SUCCESS,² IN THE LIFE
OF BENJAMIN FRANKLIN³

Mr. Whitefield, in leaving us, went preaching all the way thro' the colonies to Georgia. The settlement of that province had lately

¹ [This was the second orphanage established in the United States. The first was the Ursaline Convent in New Orleans established in 1727. —EDITOR.]

² [George Whitefield (1714-1770), a celebrated English clergyman and pulpit orator, one of the founders of Methodism, was the founder of the Bethesda Orphanage, the money for which he raised in England and America. —EDITOR.]

³ Ed. John Bigelow (3d ed., rev. and corrected; Philadelphia: J. P. Lippincott Co., 1893), I, 268 and 269.

been begun, but, instead of being made with hardy, industrious husbandmen, accustomed to labor, the only people fit for such an enterprise, it was with families of broken shop-keepers and other insolvent debtors, many of indolent and idle habits, taken out of the jails, who, being set down in the woods, unqualified for clearing land, and unable to endure the hardships of a new settlement, perished in numbers, leaving many helpless children unprovided for. The sight of their miserable situation inspir'd the benevolent heart of Mr. Whitefield with the idea of building an Orphan House there, in which they might be supported and educated. Returning northward, he preach'd up this charity, and made large collections, for his eloquence had a wonderful power over the hearts and purses of his hearers, of which I myself was an instance.

I did not disapprove of the design, but, as Georgia was then destitute of materials and workmen, and it was proposed to send them from Philadelphia at a great expense, I thought it would have been better to have built the house here, and brought the children to it. This I advis'd; but he was resolute in his first project, rejected my counsel, and I therefore refus'd to contribute. I happened soon after to attend one of his sermons, in the course of which I perceived he intended to finish with a collection, and I silently resolved he should get nothing from me. I had in my pocket a handful of copper money, three or four silver dollars, and five pistoles in gold. As he proceeded I began to soften, and concluded to give the coppers. Another stroke of his oratory made me ashamed of that, and determin'd me to give the silver; and he finish'd so admirably, that I empty'd my pocket wholly into the collector's dish, gold and all.

3. Whitefield's Account of Bethesda in 1741

GEORGE WHITEFIELD: AN ACCOUNT OF MONEY RECEIVED AND
DISBURSED FOR THE ORPHAN-HOUSE IN GEORGIA
(LONDON, 1741)

I think, with a full Assurance of Faith, I may affirm the Lord put it into my Heart to build that House. It has prospered beyond Expectation. It has already, and I hope will yet more and more answer its Name (*Bethesda*) and be a House of Mercy to the Souls and Bodies of many People, both old and young.

When I left *England*, I proposed to take in only twenty Children.

But when I arrived at *Georgia*, I found so many Objects of Charity, besides the Orphans among the poor People's Children, that I resolved in this, as well as in all other Respects, to imitate Professor *Frank*, and make a Provision for *their* Maintenance also.

Two of the Orphan Boys were put out Apprentices, just before I left *Savannah*; one to a Bricklayer, another bound to a Carpenter; a third is to be bound to the Surgeon belonging to the Orphan-House; one weaves in a Loom at home; two I put to a Taylor I brought over, and the rest are now fitting themselves to be useful to the Common-wealth. Whoever among them appear to be sanctified, and have a good natural Capacity, those, under God, I intend for the Ministry.

None of the Girls are put out as yet, but are taught such Things as may make them serviceable whenever they go abroad. Two or three of them spin very well. Some of them knit, wash, and clean the House and get up the Linen, and are taught Housewifery. All capable are taught to sew. And the little Girls, as well as the Boys, are employed in picking Cotton. I think I have no less than 382 Yards of Cloth already in the House, and as much Yarn spun as will make near the same Quantity, "A Thing not known before in *Georgia*."

I have now 49 Children under my Care, 23 *English*, 10 *Scots*, 4 *Dutch*, 5 *French*, 7 *Americans*. Twenty two of these are Fatherless and Motherless, 16 Boys and 6 Girls. The others are some of them Fatherless, and some without Mothers; all Objects of Charity, except three, whose Friends recompense the Orphan-House for their Maintenance. One of the Orphans is an Infant. I pay four Shillings *per* Week for nursing it. Since *December* last, we have had above 18 more Children that have been maintained occasionally, to assist their Parents, and been dismissed when they were wanted at home.

The Account which I find Mr. Seward has given of our Oeconomy, has in a great Measure prevented my doing it as I intended. Let it suffice to inform our Benefactors, that tho' the Children are taught to labour for the Meat which perisheth, yet they are continually reminded to seek *first* the Kingdom of God and his Righteousness, and then to depend upon God's Blessing on their honest Endeavours for having Food and Raiment added unto them. This Precept of our

Lord, I intend, when the House is finished, to have written over against the Entrance in at the great Door.

As my Design in founding the Orphan-House was to build up Souls for God, I endeavour to preach most of all to the Children's Hearts. But that they may be able to give a Reason of the Hope that is in them, I constantly instruct them out of the Church of *England's* Articles, which I turn into catechetical Questions [pp. 1-2].

We are now all removed to *Bethesda*. We live in the Outhouses at present; but in less than two Months, the great House will be finished so as to receive the whole Family.

It is now weather-boarded and shingled, and a Piazza of 10 Foot wide built all around it; which will be wonderfully convenient in the Heat of Summer. One Part of the House would have been intirely finished, had not the *Spaniards* lately taken from us a Schooner loaded with ten thousand Bricks, and a great deal of Provision, with one of our Family. And therefore, I could not till very lately procure another Boat to fetch Brick from *Charlestown*.

Notwithstanding this, and many other Hindrances, the Work has been carried on with great Success and Speed. There are no less than 4 framed Houses, a large Stable and Cart-house, beside the great House. In that there will be, I think, 16 commodious Rooms, besides a large Cellar of 60 Foot long and 40 wide. Near 20 Acres of Land are cleared round about it, and a large Road made from *Savannah* to the Orphan-House, 12 Miles in Length; a Thing not before done since the Province has been settled.

None but those upon the Spot can tell the Expençe, as well as Ill-conveniency that attends building in *Georgia*. Most of our Bricks already used, cost 40s. *Sterling per* Thousand when landed at the Plantation. Common Labourers, besides their Provisions hitherto, have 25s. *Sterling* a Month. And, after all, the Produce of the Land cultivated by white Servants, will scarcely furnish them with ordinary Food and Raiment, exclusive of the Expences of Sickness and Wages. I cannot see how it is possible for the Colony to subsist on its present Footing. And in a late Memorial given in to the Honourable Trustees, unknown to me, the People have declared, that if it were not for the Money that has been expended on

Account of the Orphan-House, the poor Inhabitants of the Northern Parts of the Colony must have been obliged to move to some other Place. Never did a Country stand more in Need of a Charity-School.

We have often been in some Difficulties, but the Lord as often relieved us out of them. When the Schooner was lost, a Person lately converted sent us 11 Barrels of Rice, and 5 Barrels of Beef. And in my Absence, when my Family had little or no Provisions, the *Indians* brought in Plenty of Deer, till they were supplied with Food some other Way. The Contributions in *Charlestown, New-England, New-York, and Pensilvania*, I think have been extraordinary.

The Infirmary, which has likewise been supported by this Institution has been of great Service. The Surgeon informs me, that if every one had been to pay for their Nursing and Medicines, it would have cost them 200*l. Sterling*. I have now three or four sick. I keep a Woman to attend them constantly.

God has much blessed our Family with Health.—Only two have died out of so large a Number, since my Arrival; and those were two that came with me from *England*.—The Taylor, and one of the Women. I believe they are now with God.

I have left behind me, as my Assistants, who have no other Gratuity than Food and Raiment, two School-masters and their Wives who are School-mistresses. One young Man, who is also married to a young Maiden lately brought Home to God, at the Orphan-house, as Super-in-tendent, and chief Manager of the outward Things. The Surgeon and his Wife; a Shoemaker and Spinstress, besides Labourers and monthly hired Servants; I think, in all, I have upwards of 80. The Lord, I am persuaded, is able and willing to provide for them.

I think we have near 200 Hogs, and 100 Head of Cattle
[pp. 3-5].

As for manuring more Land than the hired Servants and great Boys can manage, I think it is impracticable, without a few Negroes. It will in no wise answer the Expence.

I am now several hundred Pounds in Debt, on the Ophan-house Account. Some particular Friends have been pleased to assist me. I doubt not but our Lord will enable me to pay them, and also raise up fresh Supplies for the Maintenance of my large Family.

I much rejoice in the Institution. It has been very beneficial,

not only to the Bodies, but also to the Souls of the Labourers. One Woman received Christ very lately at *Bethesda*; and I have great Reason to believe that 3 or 4 Strangers, that came to see us, have been effectually brought Home to God. My Journal must be refer'd to for Particulars.

Great Calumnies have been spread abroad concerning our Management of the Children. People shoot out their bitter Arrows in *America*, as well as in *England*. One poor Man was filled with such Resentment at the Reports he had heard of our Cruelty to the Children, that he came one Day out of *South-Carolina*, to take away two of his Boys, which, out of Compassion, I had taken into the Orphan-house; But, when he came and saw the Manner in which they were educated, he was so far from taking his Children away that he desired to come and live at the Orphan-house himself.

I speak not this by way of boasting, or to wipe off Reproach; for I know, let me do what I will, I shall never please natural Men. I thought proper to give this short Account, for the Satisfaction of those who have already contributed, or shall be stirred up by our good God to contribute hereafter towards carrying on this good Design [pp. 5-6].

4. The First Public Orphanage

"AN ORDINANCE FOR THE ESTABLISHMENT OF AN ORPHAN HOUSE IN THE CITY OF CHARLESTON, FOR THE PURPOSE OF SUPPORTING AND EDUCATING POOR ORPHAN CHILDREN, AND THOSE OF POOR, DISTRESSED AND DISABLED PARENTS, WHO ARE UNABLE TO SUPPORT AND MAINTAIN THEM," RATIFIED OCTOBER 18, 1790. A DIGEST OF THE ORDINANCES OF THE CITY COUNCIL OF CHARLESTON, FROM THE YEAR 1783 TO OCTOBER, 1844¹

WHEREAS, the present mode of supporting and educating poor children at different schools, has been found by experience to be attended with heavy expense and many inconveniences, and the establishment of an Orphan House properly organized and conducted, will be attended with less expense, more convenience and benefit, and may tend to give general satisfaction to the citizens, and induce the benevolent to assist in the support of so charitable and laudable an institution:

I. SECTION I. *Be it ordained*, That a lot of land, not less than two

¹ George B. Eckhard's Digest, published in Charleston, S.C., 1844, pp. 188-89.

hundred feet square, shall be immediately laid out by the Committee of the City Lands, on the most healthy and convenient spot, and reserved for the building and erecting an Orphan House, as soon as the funds of the corporation will admit, or any practical plan to defray the expense thereof can be devised. And that all such poor orphan children and children of poor distressed or disabled parents as shall be deemed proper objects of admission by the Commissioners, who shall be vested with powers for managing the said Orphan House, shall be admitted into the same, and shall be supported, educated and maintained at the expense of the corporation, during such term and under such regulations as the City Council shall from time to time prescribe or sanction.

2. SEC. II. Nine Commissioners shall be elected by the City Council on the last Monday in October, (five of whom shall be a quorum) but if no Council should meet on that day, on the first day thereafter whereon the Council shall meet, to continue in office for one year.

3. SEC. III. Until the said Orphan House shall be erected, a proper house and lot of land conveniently situated, shall be rented as an Orphan House, by the Commissioners as aforesaid, who shall have the direction and management of the same, and who shall admit, and take charge of the clothing, maintenance and education of the children of the Orphan House; and it shall be the duty of the Commissioners to choose and appoint proper assistants, nurses and domestics, and to superintend and manage the Orphan House, the officers and servants thereof, and the children therein, to the best of their judgment and skill, subject to the control of the City Council.

4. SEC. IV. It shall be the duty of the Steward of the Orphan House to see that good and wholesome provisions are sent for the use of the children and other persons residing in the Orphan House, by the butchers, bakers, and other persons employed to furnish such articles as may be necessary; to take care of the articles delivered him for the use of the Orphan House; to keep a book of fair and regular accounts of all receipts and expenditures, which shall be subject at all times, to the examination of the Commissioners, to perform all the duties of a good Steward, to obey the directions and regulations of the Commissioners; and to enable the said Steward to discharge faithfully the duties required of him, he shall reside in

the Orphan House, and shall receive necessary provisions for himself.

5. SEC. V. A Matron of good capacity and character shall be elected by the City Council on the last Monday in October, annually, but if no Council shall meet on that day, then on the first day of the Council thereafter, as School Mistress and Matron of the Orphan House, whose duty it shall be to teach the children to read and sew, to take care that their clothes are properly made, washed and preserved, to keep the children and their rooms cleanly, and to watch over their morals and conduct; to direct the assistants and nurses, and to see that they discharge their duties faithfully, and to distribute them properly among the children, in the different rooms; to take care that the victuals provided for the children are wholesome, cleanly and well prepared; to preserve order and decorum at table and elsewhere, and to conduct the children regularly to some place of worship on the Sabbath, and to obey all the directions of the Commissioners. And to enable the said Mistress and Matron to perform her duties she shall reside in the Orphan House, and shall receive necessary provisions for herself.

6. SEC. VI. The Commissioners who shall be appointed by the City Council, shall have power and authority to make and frame such rules and regulations as they may think necessary, for the good government and conducting the business of the Orphan House, and all persons therein. *Provided*, all such rules and regulations are presented to, and approved of by the City Council, within ten days after the same are framed, and that the City Council shall and may confirm, alter and amend or annul the same.

5. The First Orphan Asylum in New York City

A. INCORPORATION

"AN ACT TO INCORPORATE THE ORPHAN ASYLUM SOCIETY IN THE CITY OF NEW YORK," PASSED APRIL 7, 1807,¹ LAWS OF THE STATE OF NEW YORK, VOL. V (1807-1809), CHAP. 179

WHEREAS, by a petition presented to the legislature, from a number of ladies in the city of New York, it is represented that they,

¹[The Society for the Relief of Widows with Small Children was organized in 1797. The problem of what to do with the children of deceased widows led to the organization

together with their associates, have formed a society for the very humane, charitable, and laudable purposes of protecting, relieving, and instructing orphan children in said city, have prayed to be incorporated:

THEREFORE, I. *Be it enacted by the People of the State of New York, represented in Senate and Assembly:* That all such persons of the female sex as now are or hereafter shall become annual subscribers, to the amount of not less than one dollar and fifty cents per annum, to the said association, shall be and hereby are constituted a body corporate and politic, in fact and in name, by the name of "The orphan asylum society in the city of New York"; and by that name shall have perpetual succession, and be in law capable of suing and being sued, defending and being defended, in all courts and places, and in all manner of actions and causes whatsoever, and may have a common seal and change the same at their pleasure; and shall, by that name and style, be capable in law of purchasing, holding, and conveying any estate, real or personal, for the use of the said corporation: *Provided*, That such estate shall never exceed in value one hundred thousand dollars, nor be applied to any other purposes than those for which this incorporation is formed . . . [p. 236].

B. AUTHORIZED TO INDENTURE ITS ORPHAN WARDS

"AN ACT TO ENLARGE THE POWERS OF THE ORPHAN ASYLUM SOCIETY
IN THE CITY OF NEW YORK," PASSED FEBRUARY 10, 1809¹

Be it enacted by the People of the State of New York, represented in the Senate and Assembly: That the orphan asylum society in the city of New York shall have the same power to bind out by indenture such children as have been instructed by the said society, and who have neither parents nor guardians, as the Commissioners of the Alms House and Bridewell in the said city have, *Provided*, That it shall be essential to the validity of every such proceedings that the Mayor of the said city shall express his written approbation on every indenture so made.

of the New York Orphan Asylum Society in 1806. See Henry W. Thurston, *The Dependent Child* (New York: Columbia University Press, 1930), pp. 40-54, for the story of this orphanage.—EDITOR.]

¹ Chap. 19. See *Origin and History of the Orphan Asylum Society in the City of New York, 1806-1806* (New York, 1896), II, 727.

C. RECEIVES A STATE SUBSIDY IN 1811

"AN ACT FOR THE BENEFIT OF THE ORPHAN ASYLUM SOCIETY," PASSED
MARCH 30, 1811, LAWS OF THE STATE OF NEW YORK
VOL. VI (1810-1812), CHAP. 86

Be it enacted by the People of the State of New York, represented in Senate and Assembly: That the Treasurer shall pay, until the further order of the legislature, to the trustees of the orphan asylum society in the city of New York, the annual sum of five hundred dollars out of the fund arising from auction duties, and appropriated to the support of foreign poor in the city of New York, and that the first payment under this Act shall be made on the first day of May next [p. 175].

D. PROGRESS BY 1850

ORIGIN AND HISTORY OF THE ORPHAN ASYLUM SOCIETY IN THE CITY OF
NEW YORK,¹ 1806-1896 (NEW YORK, 1896)

THIRD ANNUAL REPORT, MAY 12, 1809: In a report published last year by the Society they mentioned their having petitioned the Legislature for a grant of money to enable them to discharge the debts incurred by the erection of their Asylum at Greenwich, and the purchase of the six lots of ground on which it stands. Their hopes of success were sanguine, but the numerous appropriations required of that body prevented the petition in the manner desired, or to the extent of the necessities of the establishment, or even according to their own wishes, they having expressed the fullest approbation of the undertaking in a polite letter to the Board. The mode of assistance they adopted was the extending of a grant of a lottery they had previously made to the Board of Health, upon condition of their paying out of its proceeds \$5,000 to this Society, but with the restriction of not selling the tickets of the same until those of every other prior lottery should be disposed of, which, of course, would postpone the receipt of the sum mentioned at least three years [I, 32].

FIFTH ANNUAL REPORT, APRIL 4, 1811: The Board mention with regret that the petition made by them last year to the

¹ [This Society was organized in March, 1806, and was supported by private contributions usually collected in churches. Mrs. Joanna Bethune was the leading spirit in the organization for some fifty years.—EDITOR.]

corporation of this city was rejected, and as three more years must elapse before they can receive the sum promised by the State Legislature, they thought it advisable again to apply for assistance to that honorable body, and accordingly, in February last, they forwarded a petition, the fate of which is not yet known, but which they hope will procure them some relief in their present circumstances, which are so embarrassed that the Trustees would sink into despondency were not their trust firmly fixed in that Almighty friend who has made it a part of His glory that "He relieveth the fatherless" [I, 50-51].

TENTH ANNUAL REPORT, APRIL, 1816: . . . It is with peculiar pleasure they announce to their friends the receipt of \$5,000, liberally granted them by the Legislature, arising from the Board of Health Lottery. This sum has enabled them to cancel the mortgage on their property at Greenwich and to make some necessary addition to it . . . [I, 75].

THIRTEENTH ANNUAL REPORT, APRIL, 1819: . . . We have not been accustomed to consider this as a public institution, being, we may say, wholly supported by private beneficence. The only exception to this is an annual sum of \$500 from the State Legislature, procured for us through the kind offices of a gentleman long known as the patron of every good institution and who always cheered us in our course.

Our respect, our gratitude, and best wishes are associated with the name of DeWitt Clinton, in whom, during the long period he was chief magistrate of this city, we always found a steady friend and dignified protector . . . [I, 94].

EIGHTEENTH ANNUAL REPORT, APRIL, 1824: . . . The past year has been one of peculiar interest; sickness and death, from which the Asylum has been wonderfully exempt, have prevailed to a greater extent than in any former year. George Brown, aged twelve years, who had long lingered under the infirmities of a deformed body, died of scrofula and consumption; Sarah Hancock, delicate child of three years, was carried off by inflammation of the lungs, and William Bonar, aged four years, received into the Asylum free from disease, was so debilitated by whooping-cough and consumption that he survived his admission only two weeks—by him the

whooping-cough was introduced, and thirty-nine children were affected by it. In consequence of lowering the ground in the rear of the Asylum, the pavement of the yard had to be removed, which rendered dampness unavoidable, and colds and fevers prevailed during the whole of the winter. Twenty-four of the children had remittent fever. By the blessing of God and the kind attentions of Dr. Smyth Rogers and Dr. Quackenbush, all of them have recovered. The worthy Governess from unremitting fatigue has suffered much in her own health . . . [I, 126].

TWENTY-EIGHTH ANNUAL REPORT, 1834: . . . By our minutes it appears that since April last there have been 20 boys bound out and 10 girls, and 41 orphans have been admitted. The boys are bound at the age of twelve years, the girls at eleven. Their improvement in writing, ciphering, geography, needlework, and hourwork is gratifying to the disposal of your bounty . . . [I, 176].

THIRTIETH ANNUAL REPORT, 1836: . . . Thirty years have elapsed since this charity commenced its labors. The Society was organized in March, 1806, and during that period of time there have been admitted 931 children; 411 boys have been apprenticed to mechanics and farmers, and 273 girls to trades and as servants in private families. Some few have been adopted in families of the first respectability, several have the advantage of a profession, and to a remarkable degree nearly all who have left the institution sustain a fair moral character; 81 have died, and 173 is the number at present in the Asylum. The average number of about 30 is yearly bound out, and about the same number is received, except in cases of prevailing diseases, as during the cholera of 1832, when upward of 100 were admitted. The average number that has been annually supported is 170. The yearly expense of the institution, after the house and grounds are provided, is about \$7,000; the yearly expense of each child is \$41.17½. At this estimate a child is fed, clothed, and instructed for the almost incredible small sum of 11½ cents per day; how fed, how clothed, how instructed, many of our patrons well know, and rightly appreciate the tender maternal care, the bodily comfort and the religious and mental instruction bestowed upon all who are fostered beneath the friendly roof . . . [I, 191].

FORTY-FOURTH ANNUAL REPORT, 1850: . . . While that scourge

of nations, the dreaded cholera, was not permitted to enter the walls of the Asylum, the scarcely less fatal epidemic, the dysentery, had fearful sway in this little community. Three-fourths of the children were more or less under its influence and ten little graves in the village churchyard bear witness to the number of its victims

After an interval of some months, the scarlet fever appeared, and called forth again the solicitude of the Managers; but a kind Providence suffered it not to extend beyond thirty cases, and though in some of these it assumed its usual violent form, in the majority the symptoms soon yielded to excellent nursing and medical treatment. . . . [I, 298-99].

6. Public Care in Massachusetts

A: THE MONSON PRIMARY SCHOOL

THIRD ANNUAL REPORT OF THE BOARD OF STATE CHARITIES OF
MASSACHUSETTS, JANUARY, 1867, PUB. DOC. NO. 17

THE PRIMARY SCHOOL AND ALMSHOUSE AT MONSON

Since its opening on the 3d of September last, the Primary School has been the more important part of the establishment at Monson. The number of its pupils was then 345, out of a total in the establishment of 520; it is now 436 out of a total of 660. Of this number, however, there is an average attendance of only about 370 in the classes, which are under the instruction of a Principal, and six assistant teachers. . . . The arrangement of the school-rooms, dining-rooms, dormitories, etc., is not yet all that it should be, but improvements are making, from time to time, and we have reason to anticipate a gradual but certain gain to the children from the new organization. The Rules for the Primary School were prepared with great care after long deliberation. They define so clearly the duties of each officer, and the general purpose and character of the School, that they are not likely to be misunderstood. . . . If we are not disappointed in this, and if the material concerns of the School are properly arranged, we shall have high expectations of the good results of the legislation of 1866 in regard to these poor children. The principle adopted is sound, and can only fail to work well through neglect or maladministration.

To guard against this, where it is perhaps most likely to occur, we have established an Agency for visiting the apprenticed children in their homes, tracing out their condition, redressing their grievances, correcting their faults, and keeping them in communication with the Institution which sends them forth. During the last three months, our Agent, Mr. Fisk, has visited 160 children indentured or placed in families from the Almshouse or the Primary School. In these visits he has discovered many abuses, and much that is gratifying in the relation between the children and their masters. He has collected and deposited in the Savings Bank, for the benefit of some ten boys and girls, the sum of \$1,218, which had been unjustly withheld from them, or was paid as compensation for hardships inflicted. This sum is said to be greater than the whole amount collected for similar objects by the Inspectors since the Almshouse was opened in 1854. He has also found places for 30 children.

In his monthly reports to our Board, Mr. Fisk makes the following statements, which we deem worthy of the attention of the Legislature:—

On the 11th of December I visited the town of C., to look after a girl 12 years of age, who had been bound to one F., and had been in his family two years. A testament had been missed and the girl was charged with having put it out of the way. She was taken down cellar and punished with a horsewhip till the blood started from her arms. She was then told that if she did not find the book before the next night she should receive a similar whipping. But when the next evening came the girl was missing, and a search by Mr. F. and his neighbors till midnight failed to find her.

Bare-footed, bare-armed and bare-headed, the girl had fled to the woods to escape the threatened punishment. She sought refuge in a cluster of hemlock bushes, and there remained through the night. . . .

The whole neighborhood was aroused early the next morning, and the girl was found about nine o'clock, benumbed and almost speechless. She was taken in charge by the selectmen, who sent notice to the Almshouse.

I found the neighborhood a good deal excited, and that Mr. F. had disposed of his farm and was on the point of leaving. A mob had visited his house in the night for the purpose of giving him a coat of tar and feathers, and his flock of geese had been caught to furnish the feathers. A guard had been stationed at his house every night, and a State Constable was in the vicinity endeavoring to ferret out those engaged in the mob.

Mr. F. admitted that he had punished the girl too severely, and expressed himself willing to do what was right in the premises.

As the girl had received no permanent injury from the punishment and exposure, I settled the matter for \$50—the sum Mr. F. had agreed to pay the girl when she became eighteen. This amount I have placed in the savings bank for her benefit. I also found a good place for her in the neighborhood. The testament, which was the cause of all the trouble, was found by a son of Mr. F. where he had left it, and forgotten it. . . .

My observations thus far have led me to the following conclusions:

1st. That the efforts to fit children for places in families should not be measured by dollars and cents.

2d. That the Superintendent should acquaint himself with the disposition and peculiarities of every child and make a record of the same against his or her name.

3d. That a child of passionate temper should not be placed in a family where the master or mistress is of a similar disposition. When such instances do occur there is apt to be trouble pretty soon.

4th. That the time of trial should be extended from one to two months, during which time the child should be visited and the condition of parties ascertained. . . .

5th. That the same practice should be adopted with Almshouse children as has been provided for pupils of the Primary School, viz.: Both girls and boys should be placed out on an agreement till eighteen years of age, instead of twenty-one as provided for the boys in the Almshouse indentures. . . .

6th. That girls suffer more abuse than boys. The latter, when ill-treated, run away, while girls not being so well calculated to take care of themselves, remain and suffer.

7th. That no really bad child should be put into a family, till he or she has been properly disciplined and made better at the Almshouse or Primary School.

8th. That children should be placed out as young as possible. . . .

Finally. That by proper care in placing children in families and occasionally visiting them, eighty per cent of them will remain where they are placed till they arrive at the age of eighteen [pp. xlv-xlix].

B. FOSTER-HOME PLACEMENTS

FIFTH ANNUAL REPORT OF THE BOARD OF STATE CHARITIES OF
MASSACHUSETTS, JANUARY, 1869, PUB. DOC. NO. 17

The Primary School Act.—Closely related to this subject is that of educating the pauper children of the State. Their education, under the Primary School Act of 1866, is to be carried on at Monson until they can be placed in the better school of a good Massachusetts family, where they can learn thrift and self-respect, and manifold lessons that are seldom taught in great public establishments. There can be no doubt, I think, that the results of the Act of 1866 (Chapter

209,) have been good; but the best results have not yet been attained, because the Monson establishment has very slowly changed the Almshouse character which it had acquired in the dozen years before the Primary School was opened; and even if it had fully entered at first into the spirit of the law, it would still have required much time to adapt the new institution to the habits and sympathies of the community. As a general rule, the persons who now take children into their families from the State institutions, do so primarily for their own advantage, and only secondarily, if at all, for the good of the child; but it frequently happens that the child who was taken as a servant secures a place in the affections of the family taking him, and so the connection ceases to be a mercenary one. These cases, however, do not form the rule, it is to be feared, and this for the reason that the better families in the State—that is, the families of the most virtue and humanity and wisdom—do not generally apply for pauper children to be brought up in their houses. One of the duties of the Visiting Agent, who has accomplished so much good, is to find more and more such families who can be induced to receive these poor children—and then the existence of such an agency improves the treatment of all such children; but, in general, the small children, the sickly, the troublesome and the vicious, are not readily taken by families, and will not be until some inducement greater than now exists is offered; and it is worth while to consider whether the State shall not hereafter pay a small sum per week for the board of these children in selected families, where they will be well cared for, instead of keeping them in large numbers at a State Institution. A proposition of this kind has already been put forth in your Reports; but no practical effort to carry out such a policy has yet been made . . . [pp. 44-45].

Report of the State Visiting Agent. Children from the State Primary School and Almshouse at Monson.—At the time of making my report last year, there had been placed out from the Monson institution nine hundred and seventy-seven (977) children, of whom seven hundred and fifty-nine (759) were supposed to be in their places; and of these, all but one hundred and sixty-four (164) had been visited, or their condition ascertained. . . .

Some of them are so distant that they could not be visited without

great expense, and the condition of such has been ascertained, as well as it could be, by writing. I am satisfied, however, that the only sure way of ascertaining the condition of a child is by a personal visit.

If the child has been out only a short time, the first visit will not answer all purposes. A child "must be summered and wintered" before it can be ascertained how he is to be treated—whether he is to be properly fed, clothed, schooled and worked—and quite as much may be learned from a second visit as from the first.

The child in its growth often develops qualities in striking contrast to those exhibited when first taken, and the family quite as often changes its treatment of a child; hence the need of constant watchfulness and care over these wards of the Commonwealth . . . [p. 178].

The children placed out during the past year were distributed as follows: in Massachusetts, 93; in Connecticut, 15; in Vermont, 5; in Iowa, 1; total, 114.

In addition to the above visits, I have made three hundred and eighty-nine re-visits. Some of these have been made at the request of masters; others at the desire of children. Many little difficulties that have sprung up between children and the families in which they live, have by these visits been reconciled. Formerly, the remedy for real or fancied abuse, especially in the case of boys, was for them to run away. Now, they write to your Agent, or, if not able to write, get some neighbor to do it for them. There is, consequently, a large decrease in the number of runaways, and though abuses will occasionally happen, they are not likely to be severe, or of long continuance. In two instances, small boys came distances of eighteen and twenty miles on foot to lay their grievances before me . . . [p. 180].

It has been necessary to make some removals on account of ill-treatment, and to collect penalties in a number of cases of wrong.

In the settlement of twenty-four cases, I have collected over twenty-three hundred dollars, (\$2,373.64). Some of these were bounty cases, where masters had taken the reward paid to their boys for enlisting, and put it in their own pockets. In one instance, where a master had sold his boy to a neighboring town, and refused

to give him anything on his return from service, I was obliged to bring a suit, which was carried to the Supreme Court, resulting in a verdict of six hundred and two dollars and seventeen cents (\$602.17) for the boy. Suit has also been commenced against another master, who refused to disgorge the bounty money of his boy. The latter enlisted and served three years in the army. . . . All this time he was sending home his bounty and wages, till they amounted to nearly seven hundred dollars. On his return, the master made a settlement with him (unwilling on the boy's part), for three hundred and twenty-five dollars, (\$325), and refuses to pay him more . . . [pp. 180-81].

One of our boys, fifteen years of age, who ran away from the Almshouse, committed larceny in Connecticut and got into jail. He sent for me and I visited him in prison, and was with him when his trial came on. He pleaded guilty, and, at my request, was sentenced to the Reform School instead of prison. . . .

In Vermont, on one of the coldest days last winter, a girl fourteen years of age was found piling brush with her master, a mile away from home. She was thinly clad and must have suffered severely. She had been accustomed to out-door work, had no schooling, no decent clothes, and had not attended church in the two years that she had lived there. These neglects were promptly remedied after my visit; but the girl was dissatisfied, and I removed her to a clergyman's family, where she is now doing well . . . [pp. 181-82].

Children have been invited to visit the Primary School, and to consider it a temporary home when out of a place. Many of them have availed themselves of this invitation, and spent a day or a night at the institution. They are learning to look to the State as a friend, instead of a hard, ungenerous master . . . [p. 182].

Children placed out from the State Almshouse at Tewksbury.—These children have been looked after by Mr. Elliot, one of the Inspectors, during the past year, and only one has come under my observation. From his statistics it appears that the whole number of children placed out from Tewksbury since the opening of the Almshouse to October 1, 1868, is four hundred and thirty, (430), of whom he has found one hundred and three, (103). One hundred and two (102) were found to have been returned to the Almshouse,

to be supported there by the city or town, according to the laws relating to the support of the poor, until they can be otherwise cared for. And the overseers shall visit such children, personally or by agent, at least once in three months, and make all needful inquiries as to their treatment or welfare.

SEC. 2. Section one of chapter four hundred and one of the acts of the year eighteen hundred and eighty-seven is hereby amended by inserting in the second line, after the word "Boston," the words:—or of any town,—also by inserting in the tenth line, after the word "city," the words:—or town,—so as to read as follows:—*Section 1.* Whenever the overseers of the poor of any city except the city of Boston, or of any town, fail to place out according to the provisions of section three of chapter eighty-four of the Public Statutes any pauper child in their charge for two months from the date of their receiving of such child, then the authority vested in said overseers under said section three may be exercised by the state board of lunacy and charity, to the exclusion of said overseers, and under the authority of the state board of lunacy and charity such child shall be supported by the city or town in the same manner as if placed out by its overseers of the poor, and shall be subject to the visitation of the said state board of lunacy and charity, its officers or agents, until the said state board of lunacy and charity shall be furnished with evidence satisfactory to said board that the overseers will properly care for such child in accordance with the provisions of said section three.

SEC. 3. This act shall take effect upon its passage.

7. County Homes in Ohio

A. ESTABLISHMENT

"AN ACT FOR THE ESTABLISHMENT, SUPPORT AND REGULATION OF
'CHILDREN'S HOMES' IN THE SEVERAL COUNTIES OF THE STATE
OF OHIO," OHIO LAWS OF 1866, P. 45

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the county commissioners of any county in this state may, and they are hereby authorized, when in their opinion the interest of the public demands it, to provide for the purchase of a suitable site, and the erection of the necessary buildings, to be

styled the "children's home" for such county, and to provide means by taxation for such purchase, and support of the same.

SEC. 2. That when the necessary site and buildings are provided by the county, it shall be the duty of the commissioners of such county to appoint thereafter, annually, on the first Monday of March, a board of five trustees, who shall not receive any compensation for their services, but who shall have the entire charge and control of said "children's home," and shall appoint a suitable person superintendent of the "children's home," who shall reside in some apartment of the same, or other building contiguous thereto, and shall receive such compensation for his services, perform such duties, and give such security for their faithful performance as the trustees shall by by-laws prescribe, and may be removed by them at pleasure. Said trustees shall also appoint a suitable person matron, whose duty it shall be to have especial care of the inmates of the "children's home," and direct their employment, give suitable physical, mental and moral training to the inmates, and superintend the household, and may be removed by the trustees at pleasure.

SEC. 3. The "children's home" shall be an asylum for all persons resident of the county, under sixteen years of age, who, by reason of orphanage, or neglect or inability of parents to provide for them, in the opinion of the board of trustees, are suitable persons for such provisions, and they shall be admitted by the superintendent on the warrant of such trustees, or their duly authorized agent, accompanied by a statement of facts signed by them, or him, setting forth the name, age, birthplace, and present condition of the person named in such warrant; which said statement of facts contained in said warrant, together with any additional facts connected with the history and present condition of said person, shall be by the superintendent recorded in a book provided him for that purpose by the county commissioners of such county, which book shall be at all times open for inspection by persons who may be interested in the inmates of said "children's home."

SEC. 4. That it shall be duty of the superintendent, with the advice and consent of said board of trustees, to seek suitable homes for all such children so committed, and indenture the same to such persons as may be willing to receive the same, or permit the same to be

adopted by parties willing to adopt such children; provided, that the person to whom such child is indentured, or by whom such child is adopted, is deemed, by said board of trustees or superintendent, a suitable person. And the said superintendent shall enter in a book, to be provided him by the county commissioners of such county, the date when any of the inmates of said "children's home" shall be indentured or adopted, the name and age of such inmate, the name and place of residence of the person to whom indentured, or by whom adopted; and if indentured, a substantial statement of the condition of such indenture, which said book shall be at all times open for inspection to any person interested in any of the inmates of such "children's home."

SEC. 5. It shall be the duty of the said board of trustees to report quarterly to the county commissioners of said county the condition of the "home," and make an annual report in writing of the condition, wants, and operations of the same, and furnish an accurate account of all receipts and expenditures.

SEC. 6. That in any county in this state where there now is, or hereafter may be established, by private charity or otherwise, a "children's home," the same may be purchased or sustained, under the provisions of this act, by the county commissioners.

SEC. 7. This act shall take effect and be in force from and after its passage.

B. THE OHIO BOARD OF CHARITIES ON THE COUNTY HOMES

SEVENTH ANNUAL REPORT OF THE OHIO BOARD OF STATE
CHARITIES, NOVEMBER 15, 1882

CHILDREN'S HOMES

These institutions are slowly multiplying, and the work they have accomplished in removing children from the miserable and degrading surroundings and associations of our county infirmaries; in supplying educational advantages, with social and moral training for these children; in the rescue of other children from the streets or homes of poverty and vice; in tiding over, by temporary care and relief, children of sick and disabled parents, and especially in the accomplishment [of] the one important end contemplated in the organization of these homes, that of placing homeless and dependent children

in families; in all these things a great work has been accomplished, and cannot be too highly spoken of.

If all has not been done that would seem possible, or if there are apparent defects in the organization and management of these homes, it should be remembered, that as public institutions these Homes for Children are of recent date. Experience thus far has justified every rightful expectation of success, and would encourage progress, and yet there are serious liabilities involved in the organization and management of such charities, and no small danger that the County Home may be so managed as to become burdensome to the people without accomplishing a corresponding benefit to the children.

If they shall to any extent become political in their organization, or in any degree subject to partisan political influences—spoils over which unprincipled men shall wrangle in the interest of party or for sectarian purposes—then to such extent will the design of this organization be frustrated, and their usefulness hindered. The possibility of such a danger is already apparent, and cannot be too speedily or too strongly denounced.

Misapprehension of the real object of these Homes, is another danger which it will be well to consider.

It was no part of the original idea that these Homes were to become simply asylums into which children could be gathered for care and training, and where they were to remain until of age sufficient to care for themselves. There will, of course, be more or less children for whom places in families may not be found, but this number will be small if right ideas prevail and proper diligence is given to placing children in families as fast as good families can be found, willing to receive them, either by adoption or indenture.

No child should be kept in an institution of any kind, charitable or correctional, a single day beyond the time when a good family, made acquainted with the habits and disposition of such child, would be willing to take it under family protection and care.

PLACING CHILDREN

While we may insist on "putting the children out," it is not presumable that everybody that wants or that may be willing to take a

child, is therefore a proper custodian. No public duty involves greater responsibility, none demands greater care.

There are great interests at stake, public as well as private.

He who lightly esteems such guardianship, or who fails to consider the sacredness of such obligations, is unfitted for trusts so important.

Private institutions, such as the Protestant Orphan Asylum, at Cleveland, and the Protestant Orphan Asylum and Children's Home, at Cincinnati, exercise great care and accomplish great success in placing children.

It may be that the dependence of these institutions upon private benevolence furnishes a needful incentive to activity in placing them; and on the other hand, when the support is derived from taxation, and can be had upon the proper warrant without further trouble, indifference to cost may result with positive harm to the child, as well as wrong to the public.

If it is at all probable, as it seems to be, that for every homeless child there is a childless home, the best work that can be done for the home, and for the child, and for community, is to bring the two together as speedily as possible.

THE FINANCIAL ARRANGEMENT

The per capita cost in the Tuscarawas County Home includes, possibly, more than should be charged to current expense account, and, while it indicates fair dealing with the public, it is rather unfortunate for the institution brought thus into comparison with other homes.

A uniform system of keeping expense accounts would contribute greatly to convenience in computing the average cost of maintenance of these homes, and would serve the further purpose of ascertaining the real economy in their equipment and support. For instance, Fairmount Home, under the joint ownership and support of Columbiana and Stark counties, is provided with a farm of one hundred and fifty-four acres, which cost originally \$13,770. This institution was organized in 1877, and from that time until the present we have been unable to secure any evaluation of farm products; meanwhile, the per capita cost year by year has been little, if any, below the average.

The Knoop Home, of Miami county, has a farm of one hundred and sixty acres donated to the county. During the past year the per capita cost was, "exclusive of farm products," \$141.70; the value of farm products is reported at \$1,000, which would add \$12.50 per capita to the cost or give us a per capita cost, including farm products, of \$154.20.

This wide difference in cost, when the farms are so nearly alike, in the absence of a system of farm accounts, renders the question of large farms for children's homes still unsettled. This is to be regretted, as other counties about to establish homes ought to have better light of experience for their guidance.

The Belmont County Home, with less than half the land of the two mentioned, maintained its children at a per capita cost of \$77.06; and the Scioto County Home, with only ten acres, reports a per capita cost of \$76.66. These figures would indicate that the large farms add to rather than diminish from the cost of maintenance.

The Lawrence County Home has no premises—scarcely a playground for its children, and the cost per capita was \$76.76. This home, it must be remembered, is situated within the corporation of Ironton, and the children attend the public schools, and thereby the salary and boarding of a teacher or teachers is saved.

Some important ends are served by these comparative statements; they indicate the darkness through which we are compelled to grope in seeking to ascertain how best this great public interest may be promoted, and may possibly lead to some study upon the part of those interested of the statistical tables, showing number, classes, etc., of children provided for, and especially to the classified expenditures of the several homes.

To those who may turn to these tables, it may be proper to state that no entreaty could secure the return of the blank sent to Lawrence county, and in reply to our final appeal, the following letter was received:

IRONTON, OHIO, November 21, 1882

A. G. BYERS, ESQ.:

DEAR SIR: Yours of yesterday at hand, and contents noted. I have not been a trustee or manager for some time, and I do not think any one now connected with the home can give you anything more than a guess at the answers to your

questions in your printed circulars. We have a cheap home. It don't cost much to run it. The children all keep healthy. We have no deaths. We find homes for a great many children.

Respectfully,

T. J. MURDOCK

The letter explains itself, and its statement will serve to show the importance of securing competent trustees. It is due the people of Lawrence county to state that their home, while insufficient in size for its numbers, and without the facilities which most institutions of the kind are provided with, will compare favorably in its care for the household with other institutions of the kind.

Consolidating as best we can, the following are the aggregates:

Whole number at beginning of the year, September 1, 1881.....	858
Received during the year.....	721
Total for year.....	1,579

Discharged as follows:

Returned to parents or guardian.....	220
Placed in families.....	224
Transferred to other institutions.....	54
Ran away.....	20
Out on trial.....	64
Died.....	33

Total.....	615
Total remaining September 1, 1882 (Athens county not reporting).....	989
Athens county (estimated).....	40

Total.....	1,029
Total daily average, not including Lawrence county..	819
Total number officers and teachers.....	45
Total number employees (Lawrence county not reporting).....	153
Total current expenses, including salaries and wages, exclusive of farm products (Morgan county not reporting and Montgomery county estimated).....	\$98,653.41
Cost per capita—general average, including fourteen counties.....	117.33
Total value of farm products.....	6,781.33
Total value of other earnings.....	\$ 195.11

The statistical reports for the year from several of the homes is so scattering as to render them almost valueless in themselves, and of course they prevent the possibility of aggregating the work and its results . . . [pp. 31-34].

As before observed, the per capita cost reported from Tuscarawas county is excessive; probably the furnishing and other expenses incidental to the organization of the Home having been included in current expense account. Leaving Tuscarawas county out of the calculation of current expense and per capita cost, the general average per capita in the other thirteen Homes is \$90.26; this sum may be reckoned upon as proximately the cost per capita of maintenance in these institutions, and any very marked variation may suggest extravagance on the one hand or an unwise economy on the other . . . [pp. 34-35].

8. State Care in Michigan

A. CHILDREN IN ALMSHOUSES IN 1870

"REPORT OF THE SPECIAL COMMISSIONERS TO EXAMINE THE PENAL, REFORMATORY, AND CHARITABLE INSTITUTIONS OF THE STATE OF MICHIGAN,"
JOINT DOCUMENTS OF THE STATE OF MICHIGAN FOR THE YEAR 1870,
VOL. II, No. 8

Very much stronger reasons can be given for the removal of the pauper children from the county poor-houses than can be given for the removal of the insane and idiots. *They* have all their faculties, and are to grow up to fill places in the State for weal or for woe. Who can doubt for a moment, when they know the influences by which such young persons are surrounded, that very many will be lost to themselves, and many more will become criminals, and inmates of our penal and correctional institutions. There is no doubt that this class, unlike the insane and idiots, can all be trained and educated.

The condition of the children in county poor-houses has been the subject of serious thought, and has called forth great commiseration from committees, boards of public charities, and philanthropists in many of the States, yet they are left, in most cases, to remain amid those baneful influences, and legislators, unmindful, as we think, of the true interests of the commonwealth, still suffer them to grow up

to become permanent charges upon the State, as large numbers of them, unless otherwise provided for, must inevitably become fixtures in our charitable, reformatory, or penal institutions. This great stream of evil should be turned aside at its source, where small means and slight influences will accomplish it, and not suffered to become the mighty torrent, carrying devastation before it. The number of children in the almshouses in the States of New York and Ohio have become so great that the authorities are perplexed to know what to do with them . . . [pp. 76-77].

The Board of Public Charities for the State of Ohio, in their report for 1869, say: "Heretofore, the Board have felt constrained to urge the care of the infirm children upon the State. The statistics for the past year are such as to bewilder judgment as to what is best, as promising needful relief to this class of dependents, and as to meeting the social and moral obligations of the State. There is an aggregate of 947 children in the several infirmaries in the counties. These figures suggest a problem to the solution of which the State may well devote its utmost wisdom. Nearly one thousand children in the poor-houses of Ohio! What is to be done with them? Think of their surroundings. The raving of the maniac, the frightful contortions of the epileptic, the driveling and senseless sputtering of the idiot, the garrulous temper of the decrepit, neglected old age, the peevishness of the infirm, the accumulated filth of all these; then add the moral degeneracy of such as, from idleness or dissipation, seek a refuge from honest toil in the tithed industry of the county, and you have a faint outline of the surroundings of these little boys and girls. This is home to them. Here their first and most enduring impressions of life are formed. If it be sad to think of a thousand little boys and girls, all more or less intelligent, many of them bright and beautiful, in such homes as these, how deeply must every human sympathy be touched with the reflection, that to these little children the poor-house is 'all the world.' "

We have now in the county poor-houses in this State, 212 children under sixteen years of age—not including nine of the smaller counties which were not visited. It is the earnest conviction of all the members of this Commission, that these children should be taken from the county poor-houses and made the wards of the State, and that

they should be indentured out in families, or placed in orphan asylums, or in a school provided by the State, like the State primary school at Monson, Mass.

It would be wise for the State to encourage the establishment of private orphan asylums, by placing therein as many of these children as the officers of such institutions are willing to receive, and allowing them an amount for their maintenance which would be equal to the expense of keeping them in the alms-houses or primary school. In this way they would be reared and trained in virtuous ways, and at the proper age placed in private families, and thus very likely become good and useful members of society.

But if our poor-houses can not be relieved of their children by a regular system of placing them in families, or by their admission into orphan asylums, we would advise the establishment of a State primary school, where the children, until they could be indentured or adopted in families, could be educated morally and mentally, and also taught habits of industry.

But we would express our conviction that *institutional life should be avoided as much as possible*, as we consider the rearing and training in families as more natural and far superior in all respects, while we would also strongly urge the necessity of supervision of indentured or adopted children by some competent officer, who shall frequently visit them, and ascertain if the child is well cared for and the conditions of the indenture are being fulfilled . . . [pp. 77-79].

There is a class of children in all communities, who are not paupers or criminals, but who should be protected and trained by the State. These are the children of parents who neglect their offspring, either because they are vicious or indifferent,—children who swarm the streets, prowl about docks and wharves, and are almost sure to take up crime as a trade, orphans who have no one to provide or care for them, and all vagrant and abandoned children. All such should be gathered into schools, where they would receive that mental, moral, and industrial training, which their own homes or circumstances would never afford them, and from which they might at length be sent out to good situations in the country or elsewhere, where they would grow into virtuous and useful citizens, adding to, instead of preying upon the productive industry of the State.

The schools established for pauper children could also be used for this class of children, as their treatment should be substantially the same [pp. 79-80].

B. THE MICHIGAN STATE SCHOOL

"AN ACT TO ESTABLISH A STATE PUBLIC SCHOOL FOR DEPENDENT AND NEGLECTED CHILDREN," LAWS OF MICHIGAN, 1871, I, NO. 172, 280

SECTION 1. *The People of the State of Michigan enact*, That the Governor shall appoint three commissioners, for the purpose of selecting a suitable site and erecting thereon buildings for a State School or temporary home for dependent and neglected children, such institution to be known as the "State Public School."

SEC. 2. The said commissioners shall have power to receive proposals for the donation of land to the State for such site, and to receive the same by gift, or they may purchase such site if no proper location shall be given for that purpose, and they may receive proposals for donations of money or other securities, in behalf of this State, for the benefit of such School, and they may locate the same at such point as they shall deem for the best interests of this State. They shall receive no pay for their services under this act, except their traveling and other official expenses. That the Governor shall be *ex officio* a member of said board.

SEC. 3. That the deeds for such site shall be duly executed to the people of this State and delivered to the Auditor General, and the State Treasurer thereupon is hereby directed to pay, on the warrant of the Auditor General, to such grantor of whom such site shall be purchased, in case of the purchase of the same, such sums of money as may be required to pay for the site: *Provided*, That not over two thousand dollars shall be paid for that purpose. That said commissioners shall at their first meeting appoint from their number a secretary and treasurer.

SEC. 4. That the sum of \$15,000 for the year 1872, and \$15,000 for the year 1873, is hereby appropriated for the purpose of carrying into effect the provisions of this act. . . .

SEC. 5. It shall be the duty of the secretary of said commissioners to render, quarter-yearly, to the Auditor General, accounts current of all cash transactions, and all moneys received, with the proper

vouchers; and no money shall be drawn by virtue of this act by said commissioners unless they shall have first filed with the Auditor General an estimate and statement, showing the purpose for which such money is required.

SEC. 6. The said commissioners shall have the superintendence of the grounds, and the design and construction of the necessary buildings, with power to appoint an architect, superintendent, and other necessary agents and assistants, and to fix the compensation for their services, subject to the approval of the Governor; the principal building shall have a capacity for not less than one hundred children.

SEC. 7. Said commissioners, before they enter upon the duties of their office shall each take and subscribe the constitutional oath of office, and file the same in the office of the Secretary of State, and the treasurer of said commissioner shall give his bond to the people of this State in the penal sum of ten thousand dollars, with two or more sufficient sureties approved by the Governor, conditioned for the faithful performance of the duties required of him, and to properly account for all moneys received by him under this act.

SEC. 8. When the State Public School shall be finished, the said commissioners shall make under their hands a certificate thereof, which shall be transmitted to the Governor, who shall thereupon give public notice that the same is ready for the reception of dependent and neglected children. That after the completion of State Public School building, and until the last day of the session of the Legislature next succeeding such completion, said commissioners shall have the control and government of said State Public School, with the same authority and duties as are given to the board named in section nine of this act.

SEC. 9. The general supervision and government of said State Public School shall be vested in a board of control, to consist of three members, who shall be appointed by the Governor, by and with the advice and consent of the Senate, the members of which board shall hold their offices for the respective terms of two, four, and six years, from the last day of the session of the Legislature next after the completion of said State Public School building, and until their successors shall be appointed and qualified, said respective terms of office to be designated in their several appointments; and thereafter

there shall be one of said board appointed every two years, whose term of office shall continue for six years, or until his successor is appointed and qualified. The members of said board shall constitute a body corporate, under the name and style of the "Board of Control of the State Public School," with the right of suing and being sued, of making and using a common seal, and altering it at pleasure. That said board of control shall have the power of taking and holding by purchase, gift, donation, devise, or bequest, real or personal estate to be applied to the use of the institution.

SEC. 10. It shall be the duty of the members of said board of control to meet annually at the State Public School on the second Wednesday of May in each year, and at said annual meeting they shall elect outside of their own body a treasurer, who shall hold his office for one year, and until his successor shall be elected and qualified. The treasurer of said board of control shall give his bond to the people of this State, in the penal sum of ten thousand dollars, with two or more sufficient sureties approved by the Governor, conditioned for the faithful performance of the duties required of him, and to properly account for all moneys received by him under this act. It shall be their duty to meet once in four months on their own adjournments, and oftener if they shall deem advisable. They shall establish a system of government, and make all necessary rules and regulations for said School for enforcing discipline, for imparting instruction, for preserving health, and generally for the proper physical, intellectual, and moral training of the children in such School. They shall appoint a superintendent and matron for said School, and all other such officers, teachers, and servants as they shall deem best, and prescribe their several duties and fix the compensation for their services, subject to the approval of the Governor.

SEC. 11. There shall be received as pupils in such School those children that are over four and under sixteen years of age, that are in suitable condition of body and mind to receive instruction, who are neglected and dependent, especially those who are now maintained in the county poor-houses, those who have been abandoned by their parents, or are orphans, or whose parents have been convicted of crime. The said board of control shall have power to receive any

child under the age of four years or over sixteen years of age, and may reject any between the ages of five and sixteen years of age whom they may for any cause deem improper inmates of such School. No pupil shall be retained in said School after arriving at the age of sixteen years, unless by consent of said board of control.

SEC. 12. The children in such School shall be maintained and educated in the branches usually taught in common schools, and shall have proper physical and moral training.

SEC. 13. It is declared to be the object of this act to provide for such children only temporary homes until homes can be procured for them in families. It shall be the duty of such board of control to use all diligence to provide suitable places in good families for all such pupils as have received an elementary education, and any other pupils may be placed in good families on condition that their education shall be provided for in the public schools of the town or city where they may reside. That said board of control are hereby made the legal guardians of all the children who may become inmates of said School, with authority to bind out any child to a pursuit or trade during minority, under a contract insuring the child kind and proper treatment and a fair elementary education.

SEC. 14. That whenever there shall be sufficient room for the reception of the class of children described in this act, in such State Public School, no such children shall hereafter be maintained in county poor-houses. That in receiving such children into such School, preference shall be given first to dependent and indigent orphans or half orphans of deceased soldiers and sailors of this State.

SEC. 15. It shall be the duty of the superintendents of the poor of each county, and the authority is also granted to the supervisor of any town or ward, to forward to such School at the expense of the county to which such children belong, such children in any poor-house, or any others that are neglected and dependent belonging to such county, which children shall be admitted to such School on the certificates of the superintendents of the poor or on that of any supervisor, showing that such children are entitled to admittance.

C. THE WORK OF THE "VISITING AGENT" IN MICHIGAN

JOHN N. FOSTER: TEN YEARS OF CHILD-SAVING WORK IN MICHIGAN
(COLDWATER, MICH., 1884)¹

Children are received into this School, not because they are bad and need restraint, not because they are wayward and criminal, but solely because they are not able to support themselves, and have no one to support them . . . [p. 3].

The School is established upon the family plan, with about thirty children in each cottage, presided over by a Christian lady, who sustains to them the relation of a mother, and has much to do with the moral training, and general management of the family. They all go to a common dining-room, where the cottage-manager attends to them at the table, devoting all her time to their needs.

Five hours each day are devoted to school-work proper—having a graded school of five departments, to which, in a short time, will be added a kindergarten for the younger ones.

The children have regularly assigned tasks, from the little ones, five years of age, who assist in dressing those younger than themselves, to the oldest boys, who work on the farm and in the garden. Knitting, sewing, telegraphy, work in the dining-room and kitchen, general cleaning, bed-making and sweeping are all done by the children, so far as they are able . . . [pp. 3-4].

The present capacity of the School is 330, and although in 1874 it opened with room for but 150 with 300 seeking admission, during the past year every dependent child of Michigan, needing its care, has been received . . . [p. 4].

Under the laws of Michigan the Governor may appoint an agent of the State Board of Charities and Corrections, who, besides having the care of juvenile offenders, is required to seek homes for the children of the State School, and investigate all applications for children, and no child can be placed in a home in any county unless the county agent shall certify that the applicant is a proper person to have the care and training of such child . . . [p. 5].

Having an application thus approved, a child may be taken from

¹ Paper read at the National Conference of Charities and Correction held at St. Louis, Missouri, October 13-17, 1884, and printed in an abridged form in the *Proceedings of the Conference for that year*.

the School. When so taken, the Superintendent, in behalf of the Board of Control, enters into a contract of indenture, requiring proper clothing and food, attendance at school, opportunity to attend public religious worship, and at majority to pay for the benefit of the child a specified sum of money, or a pro rata amount for the time of indenture provided he does not remain the full time.

The contract may be annulled by the Board of Control whenever the best interests of the child require it. The contract does not become operative until the expiration of sixty days, giving a period of trial; so it will be seen that the first steps are taken carefully

The Board of Control of this institution had become so impressed with the importance of ascertaining more definitely if possible, the condition of all children who had gone out from the School, that they might determine what errors in the system were existing, and perhaps have remedies suggested, that about a year ago the writer was appointed Visiting Agent, and since March last has traveled over the greater portion of the State, visiting from house to house where children were placed . . . [p. 6].

Since the opening of the School, in May, 1874, to the close of the year ending September 30, 1884, there had been received into the School 1,672 children. Of these 349 were under six years of age, 604 from six to nine, 561 from nine to twelve, and 158 were over twelve years of age . . . 182 were orphans, 647 were half-orphans, and 843 had both parents living; 702 came from poorhouses . . . [pp. 6-7].

The guardianship of the Board of Control ceases whenever the child becomes of age, is adopted by order of the Probate Court, dies, is returned to its county, or when a girl is married, so that all these children remain wards of the State until one of these circumstances occur . . . [p. 7].

Six hundred and eighty-five are now in homes on indenture. Of these, 580 are doing well, giving satisfaction, and constitute parts of so many families, in the family sense; 80 are not doing so well—are doing fairly well—are somewhat discontented and lack interest, but are still remaining in their homes, and most of them will stay, grow better, and become adjusted to their home relations. Twenty-five are still in the homes in which they were placed, but are doing

poorly. They will soon make a radical change for the better or drift away. One hundred and ninety-one are in homes—not on indenture. They have either left the parties to whom they were indentured, and are self-supporting in the neighborhood, or are with their own parents or other relatives, whose improved circumstances enable them to care for their children. . . . Of these 160 are doing well, 18 fairly well and 13 poorly. Eighteen have not been heard from during the past year . . . [pp. 9-10].

The question seems to be practically settled—that children can, at present, be placed in homes as rapidly as they seek admission to the School. If this is true, a few questions naturally present themselves to all who are interested in the work: Will this condition be likely to continue, or will the homes soon be so supplied as to finally cripple the work? . . .

Most of the children so far placed have been placed in the more populous counties in the southern part of the State. For example, 924 of the 1,147 children indentured were placed in 26 counties, while in the remaining 52 counties, 223 have been placed. In some counties one child was placed to every 203 of the population. Were the same ratio to be placed in all the agricultural portions of the State, it would take more than 6,000 children, which at the rate they have been received since the School opened, would require about 40 years to supply. A society in Boston recently placed in two counties, one on either side of the city in which the State School is located, 120 children in three days. . . . I have no doubt whatever that there are plenty of good homes in Michigan for all her worthy dependent children . . . [p. 11].

Sixty-eight per cent of all children indentured have been indentured but once, and 90 per cent have been indentured not exceeding twice. There are so many causes leading to a child's losing its home, that one re-indenture for each child might not count against it . . . [p. 12].

The system of supervision now in practice, by both County and State Agents, contributes much, I think, toward preventing more frequent changes. The examination regarding the home before placing the child lays a good foundation. A visit at least once each year

by the County Agent keeps both guardian and ward assured that the rights and interests of each will be carefully guarded. . . .

Then, the more recent addition to the system of supervision, of sending an officer directly from the School to visit the children . . . causes them to feel that after all, we did not simply desire to be rid of them, but expected, after placing them in homes, to be their fathers and mothers, in so far as we can sustain so tender relations. It would also lead guardians to consider more thoughtfully their contract obligations to the child, and realize that the State was doing something more than simply sending out children upon a contract at once formal and meaningless . . . [p. 13].

In addition to his duty as County visiting officer the County Agent attends to all cases of arrest of children in his county and has advisory power similar to that imposed upon the State Visiting Agent in Massachusetts. . . .

This system of supervision, combining both local and State visitation, seems worthy of the consideration of our sister States . . . [p. 14].

9. The New Jersey Program

A. CHILDREN IN THE HUDSON COUNTY ALMSHOUSE IN 1898

ANNUAL REPORT OF BOARD OF MANAGERS OF THE STATE CHARITIES
AID ASSOCIATION OF NEW JERSEY, 1898

Report of committee on children.—The act providing for a "State Board of Children's Guardians," with county branches, which was submitted to the Senate by the Commission on Dependent Children, unfortunately failed of passage.

The act was prepared with the utmost care, and was approved by the leaders in child-saving work throughout the country. From the New Jersey point of view it was, however, a very radical measure, and naturally met with some opposition. . . . The Commission still has the matter in hand, and will submit another plan to the Legislature as soon as it convenes.

Your Standing Committee on Children feel that a review of the situation in Hudson county should be made to this Association, in

view of the fact that there are more children in the Hudson County Almshouse than in all the other almshouses in the State combined.

In the summer of 1897 the Freeholders were violently attacked in the public press for their sins of omission and commission in caring for the county's dependent children. As a sop to the public, they proposed, in July, 1897, to appropriate \$20,000 to erect a separate pavilion for the housing of the children.

The State Commissioners had a conference with the Freeholders and learned that the money would not be available until December 1st; that the proposed building could not be started during the winter months, and the work could hardly begin before March or April. It was evident to the Commissioners that the proposition of the Freeholders would not prevent the contact of the children with the adult paupers and prisoners in the daytime; it would not admit of any provision for industrial training, for improved schooling, for proper oversight, or for any of the elementary requirements of a children's home. Neither would it in any way remove the stigma resting upon a child which graduates from a poorhouse. In short, the proposition seemed to be merely a makeshift to satisfy popular clamor.

The Commissioners felt that nothing could be lost by awaiting the action of the Legislature, which was to meet in January, and therefore induced the Freeholders to withhold the proposed appropriation.

When the Legislature adjourned, without taking any action, your Committee on Children went before the Hudson county Freeholders and presented a plan for the disposition of dependent children, of which the following is a synopsis:

First. The engaging of an agent, whose duty it shall be to ultimately find homes for all the children (dependent) who are now inmates of or who may be sent to the almshouse at Snake Hill.

Second. That this agent shall investigate all homes before placing children there, reporting to a joint committee of your Board of Freeholders and the State Charities Aid Association, and that this investigation shall be of such a character that the best results may be obtained.

Third. That, after placing children in homes, a system shall be adopted which will keep your joint committee informed by the priest, pastor, school teacher or neighbor of the welfare of said child or children.

Fourth. That said joint committee shall have the power when necessary to pay board, not exceeding \$2 per week, for each child placed in a home.

Fifth. That your Board appropriate (each year) the sum of \$1,200 to cover the salary of the agent and incidental expenses.

Sixth. That every child, when possible, shall be placed in a home according to the religion of its father or mother, or both, or of its guardians.

As there are a number of children now at Snake Hill Almshouse who have parents and relatives able to take care of them, it would naturally become the first duty of the agent to investigate each case in the almshouse carefully before placing any child in a home, with the end in view of returning children to relatives, who will be obliged by law to care for them. . . .

We recommend that your Freeholders' Committee on Children be given the power to associate with them five members of the State Charities Aid Association, who, by their joint action, may carry out the plan.

We ask this because the State Charities Aid Association has auxiliary committees in each county of the State, and on this account is familiar with the local conditions and environment. Its facilities for assisting you in the placing of children in homes will be of great value. And again, this association having the general supervision of all the taxpayers' charities, penal and pauper, is in a position to prevent abuses.

The Freeholders agreed to consider it carefully, but have taken no action upon it, and have literally done nothing since to improve the condition of the almshouse children.

There are now about 700 persons in the almshouse, adults and children. There are only two bathtubs in the building. The children are admitted without any certificate from a physician or any physical examination.

The almshouse school is under the sole direction of the Freeholders, and has no connection with the local Board of Education, nor is it under the supervision of the State Board. Only two teachers are employed for over 200 children. No examinations are held, and there are no special educational standards, the teaching consisting of the mere rudiments of an elementary course.

A number of children have been placed out by indenture, from time to time, but there is no system about it. A constituent of a Freeholder will perhaps ask for a handy boy or girl, and is sent to the almshouse to make his selection. Many poor women take likely young girls away, to "mind the baby" while the mother goes out to work. The warden apparently has no power to make an investiga-

tion of the family beforehand, though he now sends his deputy to visit the family at regular intervals afterwards, to see that the child is properly cared for. This, however, is a recent innovation. A number of boys were indentured to men on the New Jersey race-tracks several years ago, and since the closing of these tracks they have been removed to other States, and the Freeholders have entirely lost all knowledge of them.

In short, the Freeholders have done nothing to better the condition of the children, of their own initiative, the few improvements that have been made being in response to pressure from outside their board.

On the other hand, it is only fair to say that the warden of the almshouse, the deputy and the matron, as well as the heads of the other county institutions, are fully alive to the shortcomings of this department, and have done the best they could, within their limitations, to minimize the evils.

We recommend that, pending the action of the Legislature, the indenturing of children be done under the direction of the warden; that a thorough investigation of the prospective home be made, before a child is placed in it; and that the warden be allowed to use his discretion as to releasing children from the almshouse . . . [pp. 9-12].

The object in caring for the dependent children is not merely to maintain them, but to fit them to become useful members of society. There is no class that is a greater menace to the community, and none, therefore, that needs more careful direction. To consign such children to an almshouse, surrounded by adult degenerates, is simply infamous. The effects of this training are so deplorable that the institution might fitly be called "an academy for the encouragement of pauperism and the development of crime."

We appeal to the people of New Jersey to take the care of dependent children entirely out of politics, and by the pressure of public opinion to force this issue upon the Legislature at the earliest possible moment [p. 13].¹

HUGH F. FOX

¹ For the establishment of the New Jersey State Board of Children's Guardians, see below, p. 257, n. 1.

B. THE WORK OF THE NEW JERSEY STATE BOARD OF
CHILDREN'S GUARDIANS IN 1899ANNUAL REPORT OF BOARD OF MANAGERS OF THE STATE CHARITIES
AND ASSOCIATION OF NEW JERSEY, 1899

The State Board of Children's Guardians have made a thorough investigation of over 400 children found in the almshouses since May 1st, which has resulted in the removal of 136 children by parents and guardians who were found by the State Board able to care for them. In a number of cases children have simply been put into pawn by the parents while they were conducting profitable businesses. We have examined the records kept of each child and find them most complete; a very valuable history of parents as well as children. The work accomplished by this Board during its six months of existence goes far beyond the expectation of those who believed in its creation. The good work done through its influence in uniting families is of great value.

Several widows who, through sickness and misfortune, have been obliged to send their children to the almshouses, have been aided in their efforts to establish homes for their children with the most successful results. We hope that nothing will impede this good work, and that they will soon be enabled to empty the Snake Hill Almshouse of all its children. We are informed by the Warden that never in the history of this institution has there been so few children within its walls. This is entirely due to the State Board of Children's Guardians [p. 10].

10. The New York Program

A. CHILDREN IN NEW YORK ALMSHOUSES IN 1855

ANNUAL REPORT OF THE SECRETARY OF STATE RELATIVE TO STATISTICS
OF THE POOR, NEW YORK SEN. DOC. NO. 72, MARCH 23, 1855

To the Hon. Elias W. Leavenworth, Secretary of State elect of New York:¹—Another cause of the increase of pauperism arises from the neglect of the proper officers to give a suitable education to the children born and brought up in our poor-houses.

¹ [One of twenty-four letters to the Secretary on *Pauperism*, usually signed "Franklin," published in a local newspaper in 1853, later included in the Secretary's report, 1855.—EDITOR.]

The number of children under 16 years in the poor-houses of the State was, in

Year	Males	Females	Total	No. Instructed during the Year	Time of Instruction
1849.....	1,120	1,755	2,875	2,639	8 months
1850.....	1,275	1,960	3,235	2,635	7½ months
1851.....	1,152	1,976	3,128	2,849	8½ months
1852.....	1,155	1,992	3,147	3,147	8 months

The returns look fair enough on their face, with respect to instruction; it would seem that the children in these establishments enjoy better educational privileges than the children of farmers in most of the rural districts of the State.

I have ascertained, however, from personal investigation, that there is no reality in all this, as you may also ascertain, if you will take the trouble to examine for yourself. I really don't know what meaning the county superintendents of the poor attach to the word *Education*; I know they sometimes use words in a sense not warranted by any Dictionary that ever I consulted. But if they mean anything which elevated the mind—anything which ministers to the moral feelings or the intellectual powers—anything which will help to get a living, or to discharge intelligently the duties incident to citizenship—there is no such thing given to the youth in our county houses. I have visited many of the poor-houses myself, and have obtained authentic information by correspondence, from many others, and from all this I think I am warranted in saying that out of the 3,000 children sheltered in them, only a very small fraction, a mere drop in the bucket, obtain an education that will be of the slightest use to them in getting a living, or in making useful members of society. In many cases the teacher is a pauper, generally an old drunkard, whose temper is soured and whose intellect is debased, and who spends the school hours in tormenting, rather than in teaching his pupils. In many of these schools there is no book except the Testament to be found, no slates, pens or paper. In some counties not a dollar has been expended in text books or stationery since

the county system has been adopted. Under such circumstances the name of school is a mere farce.

There are between five and six hundred children bound out every year from the poor-houses under the authority of the superintendents of the poor.

In the Year	Number Bound Out
1848.....	306
1849.....	601
1850.....	848
1851.....	972
1852.....	873

There is always a stipulation in the indentures for a certain amount of education for each child, or, more properly, that the child should have a certain number of months' schooling during each year of its apprenticeship. It is of course impossible for a private person like myself to acquire accurate information in relation to the fidelity with which this stipulation is fulfilled. What I could do I have done. I have made personal inquiries of the superintendents of many counties, and have sought information extensively by correspondence. I do not recollect more than two or three who have ever made a single inquiry on the subject, or who knew whether the children so bound out were sent to school or not, and in these few cases there was no pretence that the inquiries had been systematic or thorough. I have found many children bound out by the superintendents who never received one hour's education during their apprenticeship, and who, at the age of twenty-one, were cast loose on the world no better than the heathen. How can children brought up in this way be expected to become anything else than criminals or paupers, and the fathers and mothers of criminals and paupers? They have no ambition to acquire property, and if they had, they have no means to acquire it. They cannot enter into trade, because in order to do this with any success they must be able to read, write and cypher, and this they cannot do. We have shown before that the mere laborer, who has nothing but bodily strength to sell in the market, cannot save anything from his wages, his pay is too small, and his employment too precarious to permit it, and every year adds to this precariousness. A single seed of Canada thistle planted

in a field will bear a full sized plant, which, in its turn will bear seeds from which new plants will spring, and thus a field, once fertile, will become filled with these noxious plants. Just so with the 3,000 children in our poor-houses, and with the 600 who are annually bound out. Each one of these is a seed of pauperism, which will bear plants that will again bear seed, and in time will overrun the State with a burden of pauperism and crime, which it will be utterly unable to bear. This is a cause of the increase of pauperism, which is plain and tangible, and which can be understood by every one; I therefore commend it to your most serious consideration [pp. 85-87].

B. LETCHWORTH ON NEW YORK'S PROVISION FOR DEPENDENT CHILDREN IN 1874

EIGHTH ANNUAL REPORT OF THE STATE BOARD OF CHARITIES OF THE
STATE OF NEW YORK, 1875, REPORT BY WILLIAM P. LETCH-
WORTH ON PAUPER AND DESTITUTE CHILDREN

At the dates of inquiry in 1874, the six hundred and fifteen (615) children then remaining in the various poor-houses of the State, had spent in the aggregate one thousand four hundred and thirty-four (1,434) years of their tender lives in that morally and physically unwholesome atmosphere . . . [p. 169].

The history of the poor-houses and alms-houses throughout the state is replete with instances of children who have been placed out in families or asylums after having been a long time in the poor-house, and have been afterward returned as incorrigible . . . [p. 170].

It is sometimes thought that the injurious influences of poor-houses may be avoided by erecting separate establishments on the poor-house grounds, for the care of children, and that within these, they may be properly reared and educated with greater economy than could be secured elsewhere. But these well designed establishments, call them nurseries, juvenile asylums or any other name, although regarded as independent in their functions are nevertheless a part of the poor-house system, and bring children indirectly under its baneful influence, and into association with a greater or less number of the indolent, listless pauper inmates. These establish-

ments are the more dangerous, because of the delusive idea that bad influences are removed, and that a classification is effected, which, in the nature of things cannot be complete, and because the greatest injury they do to society is not immediately demonstrated. The better they are constructed, the more comfortably they are warmed and furnished, the more they attract and tempt families, having children, to become paupers, thereby aggravating the evil which they were intended to cure . . . [pp. 170-71].

Some of the reasons why children should be removed from poor-house influence, and why establishments of the kind just named should be set aside, may be summarized as follows:

1st. It is ascertained that children can be kept in asylums under more wholesome influences, and at no greater expense than the public are now subjected to in maintaining them in poor-houses.

2d. That the number at any one time a county charge will be, if they are transferred to asylums, less than if retained in poor-houses, because the officers of such establishments find it difficult to place children in good families with the poor-house brand, so to speak, upon them. . . .

3rd. That by a vigorous system of "placing out" children in families, they are brought at once under elevating influences, and the county is spared the entire expense of maintaining them.

4th. That under the present system a class of children accumulate, generally boys, who, when placed out, will not remain with their new guardians, but repeatedly come back to their old quarters. . . .

5th. That families of children coming in and going out of the establishment, though spending but a short time there, leave with self-respect lessened and largely increase the number in the community tending toward a condition of dependence.

6th. That scholars in the school department of these institutions, though placed under the management of zealous and capable teachers, are lamentably behind other children of the same age in their studies.

7th. That the maintaining of such establishments adds largely to the expenses of the adult pauper department of the county, as many adult paupers come to the county house to be supported who would not come if their children were not provided for at the same time.

8th. That the children, whether in asylums or Christian homes, come directly under the benevolent charge and elevating influences of those whose motives in assuming the responsibility of their care is based upon the highest Christian principles . . . [pp. 171-72].

Steuben County.—At the date of October 28, 1874, there were in this Poor-House fifteen (15) children. Ten (10) of them were boys and five (5) were girls. Six of the number were under two years of age. One boy, three years old, was a healthy and intelligent mulatto. A girl eight years old, was healthy, but weak-minded. A girl, six years old, was very bright and of good disposition. She was expecting to leave the poor-house soon, with her father, mother and brother. In conversation with the mother of these children, she expressed herself as desirous to have her children, especially the eldest, of whom she seemed very fond, placed in a good home, where they would be well taken care of and educated. Five of the children were born in the poor-house. The longest time any one had been there was five years. . . .

These children were found in different parts of the poor-house establishment as is generally the case. Four of them were in a ward with women paupers . . . [p. 233].

A second group of children—boys—were found in the wash-house. They were intermingled with the inmates of the wash-house, around the cauldrons where the dirty clothes were being boiled. Here was an insane woman raving and uttering wild gibberings, a half crazy man was sardonically grinning, and an over-grown idiotic boy of malicious disposition was teasing, I might say torturing, one of the little boys. There were several other adults of low types of humanity. The apartment of this dilapidated building overhead was used for a sleeping room, and the floor was being scrubbed at the time by one of the not over-careful inmates; it was worn, and the dirty water came through the cracks in continuous droppings upon the heads of the little ones, who did not seem to regard it as a serious annoyance . . . [pp. 233-34].

The third group were in a back building called the "insane department." They were the most promising children of all, and yet the place was made intolerable by the groanings and sighings of one of the poor insane creatures, who was swaying backward and forward. She was a hideous looking object, and a great portion of her

time was passed in this excited condition. The children were not sent to school, neither is a school sustained upon the premises, the number being too small to warrant the hiring of a teacher [p. 234].

Ulster County.—There are a few pauper children in the *Kingston City Alms-House*, received from the city and town of Kingston.

On the 14th of November, 1874, there were fourteen (14) children, eight (8) boys and six (6) girls. Eleven were between two and ten years of age, and three aged ten, eleven, and thirteen years, respectively. Four of the children, all of one family, had been in the institution one year. They were of English parentage and had resided but five years in the United States. The father was a miner, a temperate and industrious man. He was taken ill, came here with his wife and family, and died three months before the date of inquiry. . . . Four other children, two boys and two girls, are here with their mother. The father of these is dead. The mother of these children, as well as their grandmother, was intemperate. The oldest boy was employed on the canal during the summer, and had returned a short time previous to the inquiry, intending to spend the winter in the alms-house. He could neither read nor write. His mother is also equally ignorant. She is strong and healthy, and has passed over five years of her life in poor-houses. The younger children of this family are aged seven, five, and two years respectively. . . . A third group of four children, two girls and two boys, ranging in age from four to eleven, are of the inmates of this alms-house. Their mother is dead and they have been abandoned by their father who was a mason by occupation. He was intemperate. The mother was reported to have been a respectable, refined, and educated woman [pp. 237-38].

C. NEW YORK PROHIBITS COMMITMENT OF CHILDREN TO ALMSHOUSES IN 1875

"AN ACT TO PROVIDE FOR THE BETTER CARE OF PAUPER AND
DESTITUTE CHILDREN," LAWS OF THE STATE OF NEW
YORK, 1875, CHAP. 173

SECTION 1. On and after January first, 1876, it shall not be lawful for any justice of the peace, police justice or other magistrate to commit any child, over three and under sixteen years of age, as

vagrant, truant or disorderly, to any county poor-house of this State, or for any county superintendent or overseer of the poor, or other officer, to send any such child as a pauper to any such poor-house for support and care, unless such child be an unteachable idiot, an epileptic or paralytic, or be otherwise defective, diseased or deformed, so as to render it unfit for family care; but such justice of the peace, police justice or other magistrate, and also such county superintendent or overseer of the poor, or other officer, shall commit or send such child or children not above exempted to some orphan asylum or other charitable or reformatory institution, as now provided for by law.

SEC. 2. It shall be the duty of the county superintendents of the poor, or other proper officers charged with the support and relief of indigent persons of the several counties of this State, in which there are county poor-houses, to cause the removal of all children between the age of three and sixteen years (not exempted by the first section of this act) from their respective poor-houses, on or before the first day of January, eighteen hundred and seventy-six, and also to cause the removal of those who may hereafter come under the care and control, or hereafter be born in such poor-houses, before they shall have arrived at the age of three years, and provide for their support and care in families, orphan asylums or other appropriate institutions as now provided for by law; and the boards of supervisors of the several counties are hereby required to take such action in the matter as may be necessary to carry out the provisions of this act. In placing any such child in any such institution, it shall be the duty of the officer, justice or person placing it there to commit such child to an orphan asylum, charitable or other reformatory institution that is governed or controlled by officers or persons of the same religious faith as the parents of such child, as far as practicable.

PUBLIC SUBSIDIES TO PRIVATE AGENCIES AND INSTITUTIONS

II. The Subsidy System in New York

A. THE SUBSIDY SYSTEM IN NEW YORK IN 1886

FOURTEENTH ANNUAL REPORT OF THE STATE CHARITIES
AID ASSOCIATION (NEW YORK, 1886)¹

Although the healthy, dependent children of the State are removed from the poor-houses, their position is not such as can be thoroughly approved.

They are supported by public funds, and the public have the largest interest in their proper education and final disposition; yet the greater number of them are practically removed from any public control, and what is perhaps worse, from public inspection, so that it cannot even be known whether the care and training which they receive are of the character most beneficial to the children and to the interests of the State, or to the interests of the people who have them in practically irresponsible charge, and are in receipt of the public's money for their support. Such a system is too full of temptation not to lead to occasional abuses, and if the public support of children in private institutions is to be continued, there should be at least provision for their systematic and thorough inspection . . . [p. 8].

In the City of New York the situation is worse than it is elsewhere. The number of children paid for by the city is larger than in all the rest of the State put together, and greatly in excess of what the population calls for . . . [p. 9].

To look after the interests of the city and county in all these children whom it supports there is absolutely no one. The children are supposed to be in the institution, but no one knows the fact, and it is not believed that there is any city or county officer whose duty it is and who has the power to ascertain it. Whether they are rightfully dependent upon the city; whether they could not and ought

¹ [This association was organized May 11, 1872. Its objects were (1) to insure a more faithful and efficient administration of the present poor law system of the State of New York; (2) to improve the system itself through legislative action based upon principles comprising the alleviation of suffering and reduction of pauperism. Louisa Lee Schuyler was the moving spirit in the organization and its president from 1874 to 1882.—EDITOR.]

not to be supported by their own parents or by other counties or States; whether they are properly treated or wisely educated, or what, if any, steps are taken to make them self-supporting, no city or county official knows, and it is not believed that any of them has any power to find out.

No city official has the power which, with some restrictions, exists in the County Superintendents and Town Overseers, to remove from one institution to another or to discharge, and the simple fact is that the sole function of the city is to pay for as many children as these institutions claim to have in charge.

The first step towards reform in the City of New York is a very plain one. That is, there should be some one who has power to protect the interests of the city and of the children, and whose duty it should be to do so, and as the work must be very large it seems best that there should be a separate officer for this purpose. To such an one should be given absolute powers of inspection and investigation, and powers equivalent to those of the Superintendents; that is, the power to discharge and transfer. There is no reason why the City of New York should be deprived of all control over its dependent children, even that which other counties possess. A more serious question arises as to what control should be given to such an officer over commitments, but he should have an absolute and effective right to examine the evidence upon which commitments are made, and the right to himself examine witnesses . . . [pp. 9-10].

B. JOSEPHINE SHAW LOWELL ON THE RESULTS OF THE NEW YORK LAW OF 1875

TWENTY-THIRD ANNUAL REPORT OF THE NEW YORK STATE BOARD OF CHARITIES FOR THE YEAR 1889

Omitting the three oldest institutions for children in the city (the Orphan Asylum Society, the Roman Catholic Orphan Asylum and the Protestant Half-Orphan Asylum, supporting 1,250 children) which receive no public money except from the school fund, and which are practically supported by private charity or by invested funds, there remain twenty-five institutions for children in this city which all receive large sums from the public funds. These may be divided into two classes, those which receive less than half their

support from this source, and those which receive more than half, many of which last may be said to be supported wholly by public money. In the former class are four Catholic, three Protestant and one Hebrew institution; in the latter class are ten Catholic, five Protestant and two Hebrew institutions.

As appears from the above, there are among these twenty-five institutions fourteen Roman Catholic, eight Protestant or non-sectarian, and three Hebrew. During the year 1888, the Roman Catholic institutions had an average of about 9,200 children to care for and received \$951,808 from the city, the Protestant or non-sectarian cared for about 3,000 children and had \$420,342 from the city, and the Hebrew received \$153,899 from the city for an average of about 1,475 children.

Nine of these twenty-five institutions, seven Roman Catholic with 1,780 children and two Hebrew with 1,252 children, have been established since the passage of chapter 173, *Laws of 1875*, which provides that a dependent child shall be committed to an institution controlled by persons of the same religious faith as the parents of such child, so far as practicable, and that the board of every child so committed shall be paid by the authorities of the county, and there is no doubt that these institutions were established in consequence of the passage of that act, and to take advantage of the facilities granted for the education at public cost of large numbers of children in the Roman Catholic and Hebrew faiths.

This law has also encouraged the increase in the number of children cared for in several other institutions, which prior to its passage were of very moderate size and supported mainly by private contributions. At the time of the passage of that law the city of New York was supporting 9,363 children in private institutions and on Randall's island, at a cost of \$757,858. In 1888 it supported 14,939 children in private institutions and 758 on Randall's island, at a cost of \$1,526,617 for the children in private institutions, and at a cost of \$106,274 for the children on Randall's island, a total of 15,697 dependent children at a cost of \$1,632,891 for one year. This is an increase since 1875 of 6,334 children and \$875,033 in cost.

In former reports the attention of the Board has been called to the number and constant increase of the dependent children sup-

ported in whole or in part by public money in New York city, and this increase has been ascribed to the "per capita" allowance for the maintenance of children from the city funds, and to that provision of the law of 1875 already quoted, that is, to what has been called the "religious clause." That this law should serve to increase the number of dependent children was to be expected, because it provided exactly the care which parents desired for their children, that of persons of their own religious faith, and supplied ample means for the children's support, while, although the funds were to be derived from public sources, yet since the institutions were to be managed by private persons, the stigma which fortunately attaches to *public* relief, was removed. Thus every incentive to parents to place their children upon the public for support was created by the provisions of the law, and every deterrent was removed, for the law demanded nothing from the parent in return for the support of his child and did not deprive him of any of his rights over the child, although relieving him of every duty towards it. That the causes of the large number of children who are dependent wholly or in part on the public for support in New York have been correctly pointed out, seems to be proved beyond a doubt by the experience of the only other State in the Union, which, so far as I know, has been equally reckless in providing from the public funds for the support of unlimited numbers of dependent children, leaving the selection of the children to the persons who undertake their care and to the parents who desire to be relieved of the expense of supporting them [pp. 180-82].

Despite the different circumstances of the two States of New York and California, the result of mistaken legislation seems to have been almost identical in both. In New York, with an area of 45,658 square miles we have a population of 6,000,000 and about 20,000 children supported by the public—one in every 251 of the population—in California, the population is about 1,250,000, occupying 188,981 square miles, but they have succeeded in tempting parents to abandon their children almost as effectually as we have, for they have 4,300 children supported by the public, one in every 290 of the population.

There is a curious and interesting example of the result of exactly

the opposite course pursued by another State. Michigan has 2,000,000 people and 56,451 square miles; she has taken her children out of the poor-houses, and has provided for them in a State public school for the past fifteen years. It is stated in the last biennial report of the Board of Control of the latter institution that, "when the school was opened in 1874, there were about 600 dependent children in the State, mainly in the county poor-houses. . . . These children then cost the counties about \$50,000 annually. For fourteen years the decrease in numbers and cost has been about fifty per cent, while the increase of the population (of the State) has been fifty per cent." The law establishing the State public school, after providing the methods by which children shall be declared to be dependent on the public for support (in which care is taken to give both parents full opportunity to be heard and to claim the care of their child), contains the provision, that, after an order is made to commit a child to the State public school, "the parents of said child shall be released from all parental duties toward and responsibility for such child, and shall thereafter, have no rights over or to the custody, services or earnings of such child, except in cases where said Board may, as herein provided for, restore the child to its parents."

This provision seems to be the one which has saved thousands of parents from the temptation to desert their children, and thousands of children from the saddening and hardening effect of being cast off by their parents during their most sensitive years, to be reclaimed only when they can be made to work for those who would not work for them. Any harshness is obviated by the provision that, in special cases, the Board of Control may restore a child to its parents . . . [pp. 183-84].

The law declares that the school is "a temporary home for dependent children where they shall be detained only until they can be placed in family homes," and a number of agents are employed to seek for suitable permanent homes for the children from the school, and to visit them after they are placed in them. The result of this system is that Michigan, with a population of 2,000,000 has 200 children dependent upon the public funds for support, or one in every 10,000 of her population. This is a showing to be proud of in contrast to the condition in New York and California, already

given, where there is one child to every 300 or less of the population which has been deserted by its parents and friends and made a pauper . . . [p. 185].

The unnatural increase in the number of dependent children in New York, may, however, be more readily proved by comparison with States more nearly resembling her in conditions, and which have not adopted so radical a policy as Michigan. Pennsylvania and Massachusetts seem to furnish fair subjects for comparison with our own State.

Pennsylvania is supposed to have a population of 4,500,000, and her dependent children are estimated not to exceed 10,000, including those supported by public and private funds—this gives only one dependent child to 450 of the population.

Massachusetts has a population of about 2,000,000 (1,942,141 in 1885), and the number of her dependent children (those supported by State, towns or city funds, and not including those supported by private charity), was 1,951 in the year 1888, or one child to 995 of the population. Massachusetts has special State officers whose duty it is to take charge of her dependent children, and to be responsible for their welfare.

Besides the above interesting and suggestive comparison between States, we may find a second and equally useful lesson from the different practice in this matter of various counties in New York, and the results as contrasted with the experience of the city of New York. The city of New York is estimated to have a population of about 1,500,000—the number of her children who are supported by public funds, as has been said, is 15,697, or one to each 100 of the population. The city of New York is the only community of the State for which the Legislature has passed laws requiring that the public funds (not State funds, but funds raised by local taxation) shall be paid into the hands of private persons for the support of such children as these persons shall consider to be fitting subjects for public support, and, within very wide limits, for such time as these persons shall think well to retain them as public dependents. The rest of the State was, however, equally subject with New York city to the provisions of chapter 173, *Laws of 1875*, by which counties were required to pay the board of all children committed by all

magistrates in the county, to institutions controlled by persons of the same religious faith as the parents of the children. Two counties have, since the passage of that law, sought and obtained exemption from some of its provisions. Kings county and Albany county have each secured the passage of a special act, whereby, in the former, the power to commit children to private institutions for destitution was taken from the magistrates, and placed exclusively in the hands of the public officers having charge of the other dependent poor of the community, and, in the latter, the action of the superintendent of the poor was rendered necessary to secure payment from the public funds, so that the result was the same . . . [pp. 186-87].

Under this law the Commissioners of Charities and Correction of Kings county have assumed the whole control of the dependent children supported by the county, with the following results: In 1880, with a population of 599,495, of which the city of Brooklyn contained 566,663, it supported 1,479 dependent children, or one to every 405 of the population. The county is now estimated to have a population of 880,000, and it supported, in 1888, 1,180 dependent children, at an expense of \$106,379.75. This is one child to every 745 of the population . . . [p. 187].

Westchester county has probably increased the number of its dependent children more steadily and more in proportion, than any other county since the passage of the children's law. In 1876, with a population of 103,564, there were fifty-two children supported by the county, or one to every 1,991 of the population. . . .

At present, allowing for increase of population, the county probably has one dependent child to every 250 of the population.

It is stated that there are 132 officials in Westchester county authorized to commit children to private institutions at the public expense, and the children are retained by the institutions after commitment at the will of the authorities of the institution . . . [p. 191].

Is it not time that the interests of the public, and the interests of these 15,000 children [of the city of New York] were intrusted to the care of some responsible man or men, in New York city, to see to it, not only that \$1,500,000 of the taxpayer's money is not worse than wasted every year, but to study the whole question, to devise means to save parents from the temptation to desert their children, and to

save the children from a life of dependence, not only now, but in the future' [p. 204].

JOSEPHINE SHAW LOWELL

December 10, 1889

12. The Subsidy System in Illinois

A. THE BEGINNING OF COUNTY SUBSIDIES FOR INSTITUTIONS FOR DEPENDENT CHILDREN IN ILLINOIS

"AN ACT TO AID INDUSTRIAL SCHOOLS FOR GIRLS," APPROVED MAY 28
1879, IN FORCE JULY 1, 1879, LAWS OF THE STATE OF
ILLINOIS, 1879, PP. 309-13

SECTION 1. [*Corporation—how organized.*] *Be it enacted by the People of the State of Illinois, represented in the General Assembly* That any seven or more persons, residents of this State, a majority of whom are women, who may organize, or have organized, under the general laws of the State, relating to corporations, for the purpose of establishing, maintaining and carrying on an Industrial School for Girls, shall have under the corporate names assumed, all the powers, rights and privileges of corporations of this State, not for pecuniary profit, and shall be, and hereby are exempted from all State and local taxes: *Provided however*, that any persons organized, or who may hereafter organize as above set forth, desiring to avail themselves of the provisions of this act, shall first obtain the consent of the Governor thereto, in writing, which consent must be filed in the office of the Secretary of the State.

SEC. 2. [*Object—how school maintained.*] The object of Industrial Schools for Girls shall be to provide a home and proper training school for such girls as may be committed to their charge; and they shall be maintained by voluntary contributions, excepting as hereinafter provided.

SEC. 3. [*Enforcement of act—petition.*] Any responsible person who has been a resident of any county in this State, one year next preceding the time at which the petition is presented, may petition the county court of said county to inquire into the alleged dependency of any female infant then within the county, and every

¹ [Mrs. Lowell submitted in this report (pp. 199-201) a bill providing for the creation of a department for the care of dependent children in New York City. It was not passed by the legislature.—EDITOR.]

female infant who comes within the following descriptions shall be considered a dependent girl, viz.:

Every female infant who begs or receives alms while actually selling, or pretending to sell any article in public; or who frequents any street, alley or other place, for the purpose of begging or receiving alms; or, who having no permanent place of abode, proper parental care, or guardianship, or sufficient means of subsistence, or who for other cause is a wanderer through streets and alleys, and in other public places; or, who lives with, or frequents the company of, or consorts with reputed thieves, or other vicious persons; or who is found in a house of ill-fame, or in a poor house.

The petition shall also state the name of the father of the infant, if living, or if dead, the name of the mother; and if neither the father nor mother of the infant be living, or to be found in the county, then the name of the guardian, if there be one. If there be a parent living, or a guardian, the petition shall set forth not only the dependency of the infant, but shall also show that the parent or guardian is not a fit person to have the custody of such infant. Such petition shall be verified by oath, and upon being filed, the judge of said court shall have the female infant, named in the petition, brought before him for the purpose of determining the application in said petition contained, and for the hearing of such petitions the county court shall be considered always open.

SEC. 4. [*Writ to issue trial by jury.*] Upon the filing of such petition, the clerk of the court shall issue a writ to the sheriff of the county, directing him to bring such infant before the court to order a jury of six to be summoned, to ascertain whether such infant is a dependent, as alleged in such petition, and also to find if the other allegations, are true, and if found to be such, they shall also find her age in their verdict, and when such infant shall be without counsel, it shall be the duty of the court to assign counsel for her; and if the jury finds that the infant named in the petition is a dependent girl, and that the other material facts set forth in the petition are true, and if, in the opinion of the judge, she is a fit person to be sent to an Industrial School for Girls, the judge shall enter an order that such infant be committed to an Industrial School for Girls in the county, if there be such school in the county;

but if there be no such school in the county, then to any Industrial School for Girls, elsewhere in the State, to be in such school kept and maintained until she arrives at the age of eighteen years, unless sooner discharged therefrom in the manner hereinafter provided. Before the hearing aforesaid, notice shall be given to the parent or guardian of the infant, if to be found in the county, of the proceedings about to be instituted, and they may appear and resist the same.

SEC. 5. [*Judgment—appointment of guardian.*] If the court finds as in the preceding section, it shall further order of record, that such infant has no guardian; or that her guardian or parent is not a fit person to have the custody of such infant, as the case may be, and the court may thereupon appoint the president or any one of the vice-presidents of such Industrial School the lawful guardian of such infant, and no bond shall be required of such guardian, and such guardian shall permit such infant to be placed under the care and in the custody of such Industrial School for Girls as hereinafter provided.

SEC. 6. [*Warrant of commitment.*] A warrant shall thereupon be issued in duplicate by the clerk to some suitable person, a resident of the county, to be designated by the judge, authorizing him or her to take in charge and care, the dependent girl named in said order of the court, and convey her to the Industrial School for Girls to which she is to be committed, and said warrant shall be substantially as follows: [Form of warrant omitted.]

SEC. 7. [*Receipt endorsed on warrant.*] [Form omitted.]

SEC. 8. [*Fees for conveying to school.*] The fees for conveying a dependent girl to an Industrial School for Girls, shall be the same as conveying a juvenile offender to the Reform School for Juvenile Offenders, at Pontiac, in this State, and they shall be paid by the counties from which such dependent girls are sent, unless they are paid by the parent or guardian.

SEC. 9. [*Clothing to be provided—parent or guardian to pay for, when—allowance for support, etc.*] It shall be the duty of the county judge to see that every dependent girl committed by him to an Industrial School for Girls, shall, at the time she is conveyed to the school, be furnished with three chemises, three pairs of woolen

stockings, one pair of shoes, two woolen petticoats or skirts, three good dresses, a cloak or shawl, and a suitable bonnet. The expense of said clothing shall be paid out of the county treasurer upon the certificate of the county judge. But if the dependent girl have a parent or guardian, the court shall render judgment against him for the amount to be paid the county for such clothing, together with cost of collection; and if such expenses and cost of collection are recovered the money shall be paid into the county treasury. For the tuition, maintenance and care of dependent girls, the county from which they are sent shall pay to the Industrial School for Girls to which they may be committed, as follows:

For each dependent girl under the age of ten years, ten dollars per month.

For each dependent girl ten years and under fourteen years of age, ten dollars per month.

For each dependent girl fourteen and under eighteen years of age, ten dollars per month. And upon the proper officer rendering proper accounts therefor, quarterly, the county board shall allow and order the same paid out of the county treasury: *Provided*, that no charge shall be made against any county by any Industrial School for Girls on account of any dependent girl in the care thereof who has been by said school put out to a trade or employment in the manner hereinafter provided.

SEC. 10. [*Officers of schools—duties—powers.*] The officers and trustees of any Industrial School for Girls in this State, shall receive into such school all girls committed thereto under the provisions of this act, and shall have the exclusive custody, care and guardianship of such girls. They shall provide for their support and comfort; instruct them in such branches of useful knowledge as may be suited to their years and capacities, and shall cause them to be taught in domestic avocations, such as sewing, knitting, and housekeeping in all its departments. And for the purpose of their education and training, and that they may assist in their own support, they shall be required to pursue such tasks suitable to their years and sex, as may be prescribed by such officers and trustees.

SEC. 11. [*Adoption.*] Any girl committed under the provisions of this act to an Industrial School for Girls, may by the officers and

trustees of said school be placed in the home of any good citizen upon such terms and for such purpose and time as may be agreed upon, or she may be given to any suitable person of good character who will adopt her, or she may be bound to any reputable citizen as an apprentice to learn any trade, or as a servant to follow any employment which, in the judgment of said officers and trustees, will be for her advantage; and all and singular of the provisions of the act entitled "An act to revise the law in relation to apprentices," approved February 25, 1874; in force July 1, 1874, in so far as they are applicable, shall apply to and be binding upon such officers and trustees, upon such girl and upon the person to whom such girl is bound: *Provided*, that any disposition made of any girl under this section shall not bind her beyond her minority; and, *provided, further*, that such officers and trustees shall have a supervising care over such girl to see that she is properly treated and cared for; and in case such girl is cruelly treated, or is neglected, or the terms upon which she was committed to the care and protection of any person are not observed, or in case such care and protection shall for any reason cease, then it shall be the duty of such officers and trustees to take and receive such girl again into the custody, care and protection of said industrial school.

SEC. 12. [*No imbecile, etc., girl admitted.*] No imbecile, or idiotic girl, or one incapacitated for labor, nor any girl having any infectious, contagious, or incurable disease, shall be committed or received into any Industrial School for Girls in this State.

SEC. 13. [*Discharge from school.*] Any girl committed to an Industrial School for Girls, under the provisions of this act, may be discharged therefrom at any time, in accordance with the rules thereof, when in the judgment of the officers and trustees, the good of the girl or good of the school, would be promoted by such discharge and the Governor may at any time order the discharge of any girl committed to an industrial school under the provisions of this act.

SEC. 14. [*Visitation, etc., by Board of State Commissioners of Public Charities.*] All Industrial Schools for Girls in this State, shall be subject to the same visitation, inspection and supervision of the Board of State Commissioners of Public Charities, as the charitable and penal institutions of the State, and avoiding as far as practica-

ble, sectarianism; suitable provisions shall be made for the moral and religious instruction of the inmates of all Industrial Schools for Girls in this State. But no such industrial school shall receive an appropriation from the State for any purpose, and any school receiving an appropriation from the State shall not have the benefit of the provisions of this act.

B. CONSTITUTIONALITY OF THE ILLINOIS ACT OF 1879

IN THE MATTER OF THE PETITION OF ALEXANDER FERRIER

103 Illinois Reports 367 (1882)

Section 3 of the act¹ under which this proceeding was taken is as follows:

Any responsible person who has been a resident of any county in this State one year next preceding the time at which the petition is presented, may petition the county court of said county to inquire into the alleged dependency of any female infant then within the county, and every female infant who comes within the following description shall be considered a dependent girl, viz.: Every female infant who begs or receives alms while actually selling or pretending to sell any article in public, or who frequents any street, alley or other place for the purpose of begging or receiving alms, or who, having no permanent place of abode, proper parental care or guardianship, or sufficient means of subsistence, or who for other cause is a wanderer through streets and alleys, and in other public places, or who lives with or frequents the company of, or consorts with, reputed thieves or other vicious persons, or who is found in a house of ill-fame, or in a poor house. . . . [Section 2 declares:] The object of industrial schools for girls shall be to provide a home and proper training school for such girls as may be committed to their charge.

Mr. JUSTICE SHELDON delivered the opinion of the Court:

It is insisted that the law under which the proceeding was had is unconstitutional—first, as being in violation of the Bill of Rights as to personal liberty, in respect of the provision that no person shall be deprived of life, liberty or property without due process of law, and *The People v. Turner*, 55 Ill. 280, is relied upon as being a decisive authority in favor of appellant in this respect. That was an application by the father of a boy for a writ of *habeas corpus* to the superintendent of the “reform school” of Chicago, to free the boy from an alleged illegal restraint of his liberty, and it was

¹ Act of May 29, 1879 (*Laws of Illinois*, 1879, p. 309).

held that the law providing for the commitment to that "reform school" was unconstitutional. That school was established under a statute different and much less careful in its provisions, and nearer in its approach to a criminal enactment, than the one in question. The judge was the only one to decide in the matter. Criminals between six and sixteen years of age, convicted of crime punishable by fine or imprisonment, were confined there. That institution was regarded in that case as a place of confinement, and for punishment, and the commitment to it was regarded as imprisonment.

In the statute now under consideration, anxious provision is made for the due protection of all just rights. To begin, there must be the petition of a responsible person, verified by oath, setting forth the facts, and if there be a parent or guardian, it must also show that the parent or guardian is not a fit person to have the custody of the infant, there must be notice to the parents, the child must be brought before the court, there is a trial as to the facts by six jurymen, defence by counsel is provided, proof is made before a court of record of the facts alleged, there is a verdict of a jury of six men, and if, by the 4th section, after the verdict of the jury the judge is of the opinion that the girl should be sent to the industrial school, then he may order that she be committed there. Provision is made for a discharge from the school, when proper, through the managers, and the Governor may at any time order a discharge. This institution is not a prison, but it is a school, and the sending of a young female child there to be taken care of, who is uncared for, and with no one to care for her, we do not regard imprisonment. We perceive hardly any more restraint of liberty than is found in any well regulated school. Such a degree of restraint is essential in the proper education of a child, and it is in no just sense an infringement of the inherent and inalienable right to personal liberty so much dwelt upon in the argument.

The power conferred under the act in question upon the county court is but of the same character of the jurisdiction exercised by the court of chancery over the persons and property of infants, having foundation in the prerogative of the Crown, flowing from its general power and duty, as *parens patriae*, to protect those who have no other lawful protector. . . . The statute in question pro-

vides that if the court finds that the parent is not a fit person to have the custody of the infant, the court may appoint the president, or any one of the vice-presidents, of such industrial school the guardian of the infant, and such guardian shall permit such infant to be placed under the care and in the custody of such industrial school, and the court here accordingly made such appointment of guardian. It is a statute making provision for the needed control and care of female infants which they are found to be destitute of, and which parents should bestow, and when the superintendence in this respect, which is required, is assumed on the part of the State, there should be in the agency which the State makes use of, the same power of needful restraint in the child's care and education as belonged to the parent. The right to liberty which is guaranteed is not that of entire unrestrainedness of action. Civil government in itself implies an abridgment of natural liberty. . . .

We find here no more than such proper restraint which the child's welfare and the good of the community manifestly require, and which rightly pertains to the relations above named, and find no such invasion of the right to personal liberty as requires us to pronounce this statute to be unconstitutional. The decision in 55 Ill. as to the reform school, we do not think should be applied to this industrial school. . . .

It is objected that there was no reasonable notice given. The statute provides merely that notice to the parents shall be given. There was here written notice served upon the mother, with a copy of the petition, on the day before the trial. The step-father appeared. We think there was notice in compliance with the statute. There was opportunity to be present, and to apply for further time if not ready for the investigation.

A jury of twelve men was demanded and denied, and it is insisted there was error in this denial. The statute provides for a jury of only six. The constitutional provision that "the right of trial by jury, as heretofore enjoyed, shall remain inviolate," does not apply. This is not a proceeding according to the course of the common law, in which the right of a trial by jury is guaranteed, but the proceeding is a statutory one, and the statute, too, enacted since the adoption of the constitution. There was not, at the time of such adoption,

the enjoyment of a jury trial in such a case. In reference to this subject generally, Judge Cooley, in his work on *Constitutional Limitations*, p. 319, remarks: "But in those cases which formerly were not triable by jury, if the legislature provide for such a trial now, they may doubtless create for the purpose a statutory tribunal composed of any number of persons, and no question of constitutional power or right could arise."

The judgment of the county court will be affirmed.

Judgment affirmed.

MR. JUSTICE WALKER: I dissent to this opinion and judgment.

COUNTY OF COOK v. THE CHICAGO INDUSTRIAL SCHOOL FOR GIRLS
125 Illinois 540 (1888)

MR. JUSTICE MAGRUDER: Under the provisions of the Act of May 28, 1879, entitled "An Act To Aid Industrial Schools for Girls," and of the act to amend sections 3, 5, and 9 thereof passed on June 26, 1885, female infants to the number of about 189 were brought before the County Court of Cook County at various times between April 1, 1886, and June 4, 1887, on charges of being dependent girls. The case of each girl was submitted to a jury, who found the facts set forth in the petition to be true, and the court thereupon entered an order in the case of each of such girls, that she "be committed to the Industrial School for Girls at Chicago in said county *to be in such school kept and maintained* until she arrives at the age of eighteen years unless sooner discharged therefrom according to law." These orders were executed and the commitments were made in such manner as will hereafter appear. During the same period various certificates were issued by the judge of said County Court, certifying that certain bills for clothing, alleged to have been furnished by the Chicago Industrial School for Girls to the dependent girls so committed, were proper, and directing and authorizing the county treasurer of said county to pay the same.

This is an action . . . for the clothing so furnished to the said girls, and for their "tuition, maintenance and care" during the period aforesaid at the rate of \$10 per month for each girl. . . .

The Board of Commissioners of Cook County declined to pay these bills when presented, on the ground that they were forbidden

to do so by section 3 of Article 8 of the Constitution of this state, which reads as follows:

Neither the General Assembly, nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution controlled by any church or sectarian denomination whatever; nor shall any grant, or donation of land, money, or other personal property, ever be made by the state, or any such public corporation, to any church, or for any sectarian purpose.

It is claimed on the part of the County of Cook . . . that the appellee, the Chicago Industrial School for Girls, never had any existence except on paper; that it never owned or leased any building or conducted any such school as was contemplated by its charter and by the Act of May 28, 1879; that the corporation known as the "Chicago Industrial School for Girls" was a mere tender to two institutions called respectively the House of the Good Shepherd and the St. Joseph's Orphan Asylum; that all the commitments nominally made to appellee were as matter of fact made to these institutions; that appellee never furnished any of the clothing nor performed any of the services, for which suit is brought, but that the girls, under the warrants for their commitment, were placed at once under the charge and care of these two institutions, and were taught, maintained and clothed by them alone; that they alone have received all the money heretofore paid nominally to appellee by the County of Cook, and that they alone are to receive all the money that may be recovered in this suit; that the name of appellee is, in other words, nothing more than another name for these two institutions; that the House of the Good Shepherd and the St. Joseph's Orphan Asylum are Roman Catholic Schools under the control of the Roman Catholic Church; that, by paying the bills sued for, the County will be paying money out of the public funds in aid of a church or sectarian purpose and to help support and sustain schools controlled by a church or sectarian denomination. . . .

The House of the Good Shepherd and the St. Joseph's Orphan Asylum are "schools controlled by a church." Being such they are necessarily sectarian in their character and in their objects. One of

the definitions given by Webster of sectarianism is "adherence to a separate religious denomination."

It is further admitted that about seventy-three girls, who were committed to the Chicago Industrial School for Girls by the County Court, were already in the House of the Good Shepherd and the St. Joseph's Orphan Asylum at the times of such commitments. In other words, being already inmates of those institutions they were taken to the County Court and adjudged to be dependent girls and at once returned to those institutions, and thereafter the County was charged with \$10 per month for the tuition of each of them, and \$15 or \$20 or \$25 for clothing for each of them. We so understand the following clause in the stipulation: "That at the times of committal of the following named girls, that is to say, Katie Boyle, and seventy-two others whose names appear on stipulation, by the County Court to the Chicago Industrial School, they had been and were under the charge of the House of the Good Shepherd, or St. Joseph's Orphan Asylum, having been received into one of those institutions prior to the times of such committal to the Chicago Industrial School for Girls." It is also shown by the evidence that nineteen other girls, who had been fined by police justices and sent to the House of the Good Shepherd on account of such fines, were declared dependent by the County Court under the Industrial School Act and returned to the House of the Good Shepherd under the commitments provided for in that act. That is to say, being already in that institution by reason of the fines imposed upon them, they were recommitted to its walls because adjudged to be dependent girls.

From this review of the evidence we are forced to the conclusion that the payment by the County of the money sought to be recovered in this suit will be a payment in support of schools controlled by a church and in aid of a sectarian purpose. Even if this conclusion be too broadly stated, there is still another view, which brings the facts of the case within the terms of section 3. That section forbids any payment "in aid of any church." The two institutions in question are admitted to be under the control of two orders of the Roman Catholic Church. As we understand it, these orders are a part of the machinery of that church. Therefore, what is paid to aid them is paid in aid of a church.

The same conclusion follows from an examination of the Act of May 28, 1879, and an application of its various provisions of the peculiar circumstances of this case.

The Chicago Industrial School for Girls, as it appears in the record before us, is not such an institution as is entitled to avail itself of those provisions. It has never established, maintained or carried on an industrial school for girls as contemplated by the first section of the act. It has never provided a home and proper training school for the girls committed to its charge, as required by the second section. It was not the intention of the act, that the duties required of the schools therein mentioned should be performed by other institutions not organized as industrial schools. Its design was that each industrial school should maintain a home of its own and superintend the training of its own scholars. The eleventh section is the only one, which has reference to the care of any of the girls by outside parties. That section provides for placing an inmate in the home of a good citizen, or for her adoption by a person of good character, or for binding her to a reputable person as an apprentice or a servant, subject to the right of the "officers and trustees" of the school to see that she is properly treated, and to take her back into their own custody in case of her ill treatment. The specification in this way of a particular mode for placing the inmates under the control of outside parties excludes the idea that it was the intention of the act to permit any other mode.

The schools therein named have no power to relinquish the care and guardianship, which they are themselves required to exercise, or to intrust to others the instruction and training, which they are themselves required to give. The word, "provide," as used in the act, does not mean that the education of the pupils can be surrendered to another corporation, but that the industrial school shall adopt all proper means for accomplishing the object of its organization under the direction of its own officers and upon premises in its own control. This sufficiently appears from the language of the act. . . .

The school must be a place and must be carried on in a building. It is not sufficient that it have a charter and a formal organization. A person cannot be kept and maintained in a mere corporation, which has no *situs*—no habitation—which is nothing more than a

mere corporate entity. The appellee never had a building, in which such infants could be kept and maintained. They were kept and maintained in the two institutions already mentioned.

By the sixth section, the warrant directs the person, designated for that purpose by the judge, to take the dependent girl "and convey her to the . . . Industrial School for Girls," etc. In the case at bar the warrants gave directions to convey to the Chicago Industrial School for Girls. There was no such school. The girls were conveyed to the House and Asylum aforesaid. The seventh section provides that "upon receiving the dependent girl the matron of the school shall endorse upon the warrant" a receipt for the girl named therein. The receipts upon the warrants in this case are signed: "Johanna Williams, Matron." The proof shows, that this lady was the matron and secretary of the House of the Good Shepherd. . . .

The Board of State Commissioners of Public Charities . . . are required to inquire and examine into "the condition of the buildings, grounds and other property connected" [with the charitable and penal institutions of the state]. . . . All these expressions, and others that might be mentioned, show the meaning of the law to be, that these industrial schools must be conducted in buildings or on premises in their own possession and under their own control. . . .

By the tenth section, also, the officers and trustees of the industrial school, and no other persons, are required to provide for the support and comfort of their inmates, and "to instruct them in such branches of useful knowledge as may be suited," etc., and to prescribe the tasks necessary for "their education and training." These are duties which cannot be delegated under the terms of the act in question. The corporations charged with their performance are supposed to be peculiarly fitted therefor. It is for this reason that only those corporations, which obtain the consent of the governor, can avail themselves of the provisions of the act.

Even if the Chicago Industrial School for Girls had the power to make a contract with the two institutions in question for taking care of the dependent girls and furnishing them with a home and with instruction and training and with necessary clothing, yet there is nothing in the record to show that there was any such contract

either express or implied. On the contrary the Chicago Industrial School for Girls merely stood for those institutions and was nothing more than another name for them. Its officers were their officers. Its premises were their premises. Its training was their training. If money was paid to it, such money went to them. If girls were committed to it, such girls were taken to their buildings. . . .

We are, therefore, of the opinion, that the trial judge erred in refusing to hold as law the written propositions, which maintain, that, under the facts of this case, the payment of the money sued for would be a violation of section 3 of Article 8 of the Constitution. A constitutional mandate cannot be circumvented by indirect methods. Under our form of government church and state are not and never can be united. The former must pursue its mission without aid from the latter.

It is recorded in the national constitution that "Congress shall make no law respecting an establishment of religion." An eminent law writer says:

Those things, which are not lawful under any of the American constitutions, may be stated thus: . . . (2) Compulsory support, by taxation or otherwise, of religious instruction. Not only is no one denomination to be favored at the expense of the rest, but all support of religious instruction must be entirely voluntary [Cooley's *Const. Lim.* (5th ed.), p. 580].

The women, whose names are written in this record, are animated by the purest motives. They are engaged in the best and holiest of all works, that of reforming the wicked and caring for the unfortunate. We agree with counsel for appellee that they do their work faithfully and well. It is so shown by the proofs. But it is none the less true that, by the command of the Constitution, no county, "shall ever . . . pay, from any public fund whatever, anything . . . to help support or sustain any school . . . controlled by any church." It is not for us to discuss the wisdom or unwisdom of this prohibition. There it is, couched in terms so emphatic that it cannot fail to challenge attention. Any scheme, even though hallowed by the blessing of the church, that surges against the will of the people as crystallized into their organic law, must break in pieces, as breaks the foam of the sea against the rock on the shore.

It is objected, however, that the defense set up by the county in

the case at bar cannot be made in an action of this kind. The objection is, that the appellee was a corporation *de facto*; that the dependent girls were committed to it; that, as a result of such commitments, they were taught, cared for and clothed; that a corporate body *de facto* cannot, in the language of counsel, "have its organization questioned collaterally in an action of this character, and that, if its organization is defective, or if it fails to comply with its charter requirements, writs of *quo warranto* or *scire facias* may be directed against it to prevent its further action." We do not think the objection is well taken.

The county is required to make payment, for the tuition, etc., of dependent girls, "to the industrial schools for girls *to which they may be committed*." It is not bound to pay an industrial school to which they are *not* committed. It is not sufficient that the County Judge *orders* them to be committed. They must be actually taken to the school and placed within its building. Has not the County Board the right to inquire whether the girls have been committed to such a school or not? The Board is required to pay \$10 per month for each girl "upon the proper officer *rendering proper accounts therefor quarterly*." Has not the Board the power, in order to determine whether the accounts are "proper" or not, to examine and see whether tuition has been furnished for the number of months mentioned in the accounts? The order of the judge directs that the girl shall be "kept and maintained" in the school until she is eighteen years old, "unless sooner discharged," etc. The Board can certainly inquire into the condition of affairs to ascertain whether or not the girl has been kept and maintained, as ordered by the court, and how long she was so kept and maintained before her discharge.

If the Board, upon examination, finds that the girls have never been taken to any industrial school for girls, but that they have been taken to and kept and maintained in two institutions, that are not industrial schools for girls, and to whose care and keeping no industrial school for girls has any power to transfer them, then it becomes a serious question whether there is any authority for allowing the accounts rendered and ordering them paid out of the county treasury. . . .

Section 9 as amended says that

for the tuition, maintenance and care of dependent girls the county from which they are sent shall pay to the industrial school for girls, to which they may be committed, for each dependent girl under eighteen years of age, the sum of \$10 per month. And upon the proper officer rendering proper accounts therefor quarterly, the county board shall allow and order the same paid out of the county treasury.

As the county is not allowed to appear in the proceedings to commit the dependent girls, it has no opportunity to contest these bills for tuition except in suits brought for their collection. The adjudication of the County Court involves no other question than that the girl is dependent and should be committed to a certain school. The judgment of that court does not determine that the county must pay. The obligation of the county to pay is derived from the language of the law itself.

If, on the one side, a statute directs the county board to pay money to a school, which appears, not on the face of the statute, but from outside proof, to be controlled by a church, and, if on the other side, the Constitution, in a self-executing provision, directs the county board not to pay money to such a school, which direction is to be followed? We answer unhesitatingly, the latter. When the Constitution says: "you must not pay," it must be obeyed in preference to a statute which says: "you must pay." . . .

One of the propositions refused by the court below attempts to define what is a "sectarian purpose" as those words are used in section 3 of Article 8. It collates certain facts as above narrated, and then states, that, if the court finds these facts to be established by the evidence, "then the court finds as a matter of law that the payment of the account claimed would be in aid of a sectarian purpose," etc. One state of facts might reveal a sectarian purpose and another state of facts might not reveal a sectarian purpose. When a proposition presents the hypothesis that certain proven circumstances constitute and make up a sectarian purpose, then there is involved a construction of the word "sectarian" as used in the Constitution. . . .

Another proposition refused by the trial court presents the question whether section 3 of Article 8 shall be construed to mean, that the county shall not pay anything *directly* to the school controlled

by a church, or whether it shall be construed to mean also that such payment must not be made *indirectly* to another corporation for the benefit of the school so controlled by a church. To determine whether or not the indirect method already explained, by which money is to be taken out of the county treasury in the name of the Chicago Industrial School for Girls and passed over to the House of the Good Shepherd and the St. Joseph's Orphan Asylum, comes within the prohibition of section 3, involves an interpretation of the meaning of that section, and, by consequence, a construction of the Constitution.

But the refused propositions also present a definition of what is meant in section 3 by a payment "in aid." It is strenuously contended by counsel that section 3 was only intended to prohibit gifts or donations, and that it refers to "State support, gifts by way of aid," and "appropriations to be used by managers of religious institutions without restraint or liability to account." The theory seems to be, that, even if the two institutions *are* controlled by a church and *are* to be the recipients of all the money paid to appellee, yet neither they nor their purposes are aided by such payment, provided only there is a consideration for the money paid. It is said, that these institutions furnish tuition and clothing in return for the money received by them, and that, as they earn what they get and are not the recipients of any gift or donation, nothing is paid in their "aid" "or to help support or sustain" them. The refused propositions assert the contrary of the view thus contended for. The determination of their correctness or incorrectness requires an interpretation of the language of section 3, and, therefore, necessarily involves, a "construction of the Constitution."

The second clause of section 3 provides, that no grant or *donation* of land, money or other personal property shall ever be made to any church or for any sectarian purpose by the state, that is, the General Assembly, or any such public corporation, that is, any county, city, town, township or school district, etc. The first clause says that neither the state nor any such public corporation shall ever make any appropriation or pay from any public fund whatever anything in aid of any church or sectarian purpose. Evidently the second clause was intended to prohibit something different from the

first clause. The second prohibits grants and donations, the first, appropriations and payments "in aid." If the appropriations and payments mentioned in the first clause mean simply "donations" and nothing more, then it was surplusage to add the second clause to the section. Upon the plainest principles of construction, the first clause has reference to a different kind of aid from that to be derived from donations. Its language is comprehensive enough to embrace all appropriations and payments whether based on a consideration or not.

It cannot be said that a contribution is no aid to an institution because such contribution is made in return for services rendered or work done. A school is aided by the patronage of its pupils even if they do pay for their tuition. Because the customers of a merchant pay for their goods, it is none the less true that his business is aided by their custom. The act under discussion is entitled "An act to aid industrial schools for girls." If the payment by the county of \$10 per month on account of each dependent girl committed to such a school is no aid to the school simply because "tuition, maintenance and care" are furnished in return for such payment, then the act is not properly entitled.

The doctrine here contended for is an exceedingly dangerous one. In *County of McLean v. Humphreys*, 104 Illinois 378, it is intimated by this Court, that the state is under obligations to protect and educate such classes of female infants as were declared to be dependent girls by section 3 of the Act of May 28, 1879, as that section stood before it was amended on June 26, 1885. Under this view, the industrial schools, which teach and care of such girls, are performing, as substitutes for the state, a duty which the state itself is bound to perform. If they are entitled to be paid out of the public funds even though they are under the control of sectarian denominations simply because they relieve the state of a burden, which it would otherwise be itself required to bear, then there is nothing to prevent all public education from becoming subjected, by hasty and unwise legislation, to sectarian influences. By section 1 of Article 8 of the Constitution it is made the duty of the state to provide a thorough and efficient system of free schools. If statutes are passed, under which the management of these schools shall get into the hands of

sectarian institutions, then, under the theory contended for, the prohibition of the Constitution will be powerless to prevent the money of the taxpayers from being used to support such institutions, inasmuch as they will render a service to the state by performing for it its duty of educating the children of the people. It is an untenable position, that public funds may be paid out to help support sectarian schools provided only such schools shall render a *quid pro quo* for the payments made to them. The Constitution declares against the use of public funds to aid sectarian schools independently of the question whether there is or is not a consideration furnished in return for the funds so used.

There is nothing in the doctrine here announced which conflicts with the case of *Millard v. Board of Education*, 121 Illinois 297. There the proceeding was by an individual taxpayer against a board of education, and a majority of the court sustained the act of the board, which had no schoolhouse, in temporarily leasing the basement of a Catholic church for the purpose of holding one of the public schools therein. But the board did not part with its control of the school. The scholars were taught by teachers, whom the board appointed, and under a system of instruction, which the board prescribed.

Nor do the reasons here given for sustaining the jurisdiction of the court in this case conflict with the other case of *Millard v. Board of Education*, 116 Illinois 23. There the opinion expressly states, that no question of the validity of a statute or of the construction of the Constitution was raised. But here the question of the proper construction of a constitutional provision is directly raised upon the face of the record.

For the reasons thus stated the motion to dismiss the appeal for want of jurisdiction is overruled.

Counsel for appellant has called our attention to the changes made in section 3 of the Act of May 28, 1879, by the amendments to that section passed in June, 1885. By the latter, every female infant shall be considered a dependent girl, who shall have no permanent place of abode, or who shall not have proper parental care or guardianship, or who shall not have sufficient means of subsistence, and, if the parent or guardian of the girl is fit to have the custody of her,

the petition is only required to state that "the father, mother or guardian *consents* to the girl being found dependent." These are, indeed, extraordinary provisions. They are not found in the original act. They seem almost to lay the foundation for the establishment of paternal government. They appear to open the way for many parents to escape their obligations to support their children. If the counties are compelled to take care of all the children, whose support may be forced upon them under these broad provisions, there is danger that taxation will ere long become so burdensome as to amount almost to the confiscation of the property of the taxpayer.

But upon the question as to whether these provisions are constitutional or not, the argument of counsel is not full enough to sufficiently advise us, and we have no time at present to make original investigations. We, therefore, pass no opinion upon their constitutionality.

The judgment of the circuit court is reversed.

WILLIAM H. DUNN v. THE CHICAGO INDUSTRIAL SCHOOL FOR GIRLS
280 Illinois 613 (1917)

MR. JUSTICE CARTWRIGHT: William H. Dunn, a taxpayer of Cook County, filed the bill in this case in the circuit court of that county praying for an injunction to prevent the county board from appropriating, the county clerk from ordering paid and the county treasurer from paying the sum of \$4,151.50 for the care and maintenance of the girls committed to the Chicago Industrial School for Girls by the juvenile court of Cook County, upon the ground that the making and payment of the appropriation would violate section 3 of Article 8 of the Constitution. Answers were filed by the school and the county authorities, and replications thereto having been filed, the chancellor heard the evidence and entered a decree granting a perpetual injunction as prayed for and awarding costs against the defendants. From that decree this appeal was prosecuted.

The facts as determined by the pleadings, a stipulation of the parties and the evidence heard by the chancellor are as follows: The Chicago Industrial School for Girls was organized as a corporation under the act of the General Assembly of May 28, 1879, entitled "An Act to Aid Industrial Schools for Girls." (*Laws of 1879*, p. 309.)

It is managed and controlled by a board of directors, and maintains near DesPlaines, in Cook County, buildings, with ample grounds and equipment, to meet the requirements of the act. The buildings contain recreation halls, shower baths, class rooms, a music room and rooms for instruction in hand sewing and domestic science. The inmates are taught the usual school studies, and cooking, music, sewing, embroidery, crocheting, laundry work, general housework, and domestic work generally. The number of girls in the institution for the year 1915 between the ages of three and eighteen years was 534, and the average attendance of girls during that year was 356. A considerable number of the girls were committed to the school by the juvenile court of Cook County, and they each and all enjoyed the benefit of the care, instruction and attention afforded by the institution. There are eleven teachers or instructors who are sisters of mercy and who are paid \$16 a month, which goes into the common treasury of the religious order, and there are six other women instructors who belong to no religious order. The children committed to the school by the juvenile court are all children of Catholic parents and members of that church. The institution is under the control and management of the Roman Catholic Church, and there is a priest who is chaplain and conducts religious services. There is a mother superior in general charge, and there is a chapel on the grounds where religious services according to the doctrines of the Roman Catholic Church are held which all inmates are required to attend. The school has been receiving \$15 per month for each girl, which is less than the cost to the state for each girl committed to the State Training School for Girls at Geneva, a similar institution maintained by the state, where the cost is \$28.88 for each girl per month. The amount paid by Cook County is less than the cost of food, clothing, training, medical care and tuition furnished to the wards of the county outside of any religious instruction or religious services, and the balance above the amount paid by the county is made up by donations, largely given by the archbishop. Each year the school has been given a certificate by the State Board of Charities, or its successor, the Board of Administration, that the school is competent and has adequate facilities to care for the children committed to its care by the juvenile court.

The substantial basis of the brief and argument for the appellee is that the payment of public funds to a school under church or sectarian control violates the Constitution even when it is made in payment for clothing, board, education in the arts and sciences and training in the domestic sciences, and in the argument at the bar counsel contended that under the Constitution no ward of the state can be committed to any institution where there are religious services or where religious doctrines are taught but all institutions to which they may be committed must be absolutely divorced from religion or religious teaching. This is a clear misapprehension of the attitude of the people toward religion expressed in the Constitution. In the preamble expression is given to the gratitude of the people of the state for the religious liberty which they had been permitted to enjoy, and section 3 of the bill of rights provides:

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed. . . . No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

Section 3 of Article 8 of the Constitution, which particularly prohibits any preference to any religious denomination or mode of worship, is as follows:

Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the state or any such public corporation, to any church, or for any sectarian purpose.

The people not only did not declare hostility to religion but regarded its teachings and practices as a public benefit which might be equal to the payment of taxes, and by section 3 of Article 9 of the Constitution provided that property used exclusively for religious purposes may be exempted from the burden of taxation, and the General Assembly, by virtue of that provision, has declared such exemption. In harmony with the provision for the free exercise and enjoyment of religious freedom and worship, the General Assembly in the Juvenile Court Act provided by section 17, that

the court in committing children shall place them as far as practicable in the care and custody of some individual holding the same religious belief as the parents of said child, or with some association which is controlled by persons of like religious faith of the parents of the said child.

Not only have the people, by the Constitution and by their representatives in the General Assembly, recognized and provided for the enjoyment of religious liberty, but the court has not adopted any rule antagonistic thereto. In *Nichols v. School Directors*, 93 Illinois 61, the court said: "Religion and religious worship are not so placed under the ban of the Constitution that they may not be allowed to become the recipients of any incidental benefit whatsoever from the public bodies or authorities of the state." In *Millard v. Board of Education*, 121 Illinois 297, where the authority of a board of education to lease the basement of a Catholic church and pay rent therefor was questioned and an injunction sought, the court said that if it became necessary for a board of education to procure a building to be used for school purposes it had a right to rent from any person who had property suitable for school purposes, and whether the owner of the property was a Methodist, a Presbyterian, a Roman Catholic or of any other denomination was a matter of no moment,—which is applicable to this case, where the care and education of girls as wards of the state are required and payment must be made therefor. In *Reichwald v. Catholic Bishop of Chicago*, 258 Illinois 44, in denying the right to an injunction to prevent the erection of a Roman Catholic chapel on the grounds of the county used as a poor farm, the court said that in return for the care given the body the state does not exact the surrender of all care for the soul; that the Constitution does not prohibit the exercise of religion, but, on the contrary, provides that the free exercise and enjoyment of religious preference and worship, without discrimination, shall be forever guaranteed, and that the declaration of the Constitution does not mean that religion is abolished. The whole religious world is divided into separate denominations distinguished from each other by peculiarities of faith and practice, and what the Constitution prohibits is a preference given by law to any denomination or mode of worship or aid to any such denomination by an appropriation or payment from any public fund whatever. The Con-

stitution guarantees absolute religious liberty, and no discrimination, in law, can be made between different religious creeds and forms of worship. (*Hoeffer v. Clogon*, 171 Illinois 462.) It would be contrary to the letter and spirit of the Constitution to exclude from religious exercises the members of any denomination when the state assumes their control or to prevent the children of members from receiving the religious instruction which they would have received at home. The constitutional prohibition against furnishing aid or preference to any church or sect is to be rigidly enforced, but it is contrary to fact and reason to say that paying less than the actual cost of clothing, medical care and attention, education and training in useful arts and domestic sciences, is aiding the institution where such things are furnished.

Much reliance is placed upon the decision in a suit brought by the Chicago Industrial School for Girls against the County of Cook, in which it was held that payment to the school under the facts of the case would be a violation of the Constitution. (*County of Cook v. Chicago Industrial School for Girls*, 125 Illinois 540.) At that time the corporation had no industrial school and had neither leased nor contracted for a building nor owned or acquired property of any kind. The girls committed to it were divided between the House of the Good Shepherd and St. Joseph's Orphan Asylum, and it was in no sense an industrial school for girls. The money received was divided between the sisters of St. Joseph and the sisters of the Good Shepherd. The court held that an industrial school had no power to relinquish the care and guardianship of girls committed to it or surrender them to another corporation; that it was not sufficient to have a charter and a formal organization, with no habitation and nothing more than a mere paper entity, but that the county was only required to make payment to the industrial school to which girls were committed and was not bound to pay an industrial school to which they were not committed. It did not then appear that such payment would not be an aid to the Catholic church or its sectarian purposes, and the payment for board was likened to the aid given to a merchant by a customer paying for his goods. If there were no difference, in fact, between the business of the boarding house or hotel keeper carried on for profit and this institution the decision

in that case would apply, but upon the plainest grounds no aid is given to an industrial school where the payment is less than the actual cost, aside from and regardless of any religious instruction or religious exercise. It costs the state \$28.88 per month for each girl in a similar institution maintained by the state, and it is the state, and not the industrial school, that is benefited by the payment of less than the cost of food, clothing, medical care and attention and education and training in the useful arts and domestic science. Such payment does not violate any provision of the Constitution.

C. SUBSIDIES TO PRIVATE CHILD PLACING AGENCIES IN 1923

"AN ACT TO AMEND SECTION 7 OF AN ACT ENTITLED, 'AN ACT RELATING TO CHILDREN WHO ARE NOW OR MAY HEREAFTER BECOME DEPENDENT, NEGLECTED OR DELINQUENT, TO DEFINE THESE TERMS, AND TO PROVIDE FOR THE TREATMENT, CONTROL, MAINTENANCE, ADOPTION, AND GUARDIANSHIP OF THE PERSONS OF SUCH CHILDREN,' IN FORCE JULY 1, 1907," *LAWS OF ILLINOIS, 1923, PP. 180-81*:

SECTION 1. Section 7 of an Act entitled, "An Act relating to children who are now or may hereafter become dependent, neglected, or delinquent, to define these terms, and to provide for the treatment, control, maintenance, adoption, and guardianship of the persons of such children," approved June 4, 1907, in force July 1, 1907, as amended, is amended to read as follows:

SEC. 7. If the court shall find any male child under the age of seventeen years or any female child under the age of eighteen years to be dependent or neglected within the meaning of this Act, the court may allow such child to remain at its own home subject to the friendly visitation of a probation officer, and if the parent, parents, guardian or custodian consent thereto, or if the court shall further find that the parent, parents, guardian or custodian of such child are unfit or improper guardians or are unable or unwilling to care for, protect, train, educate or discipline such child, and that it is for the interest of such child and the people of this State that such child be taken from the custody of its parents, custodian or guardian, the court may make an order appointing as guardian of the person of such child, some reputable citizen of good moral character

and order such guardian to place such child in some suitable family home or other suitable place, which such guardian may provide for such child or the court may enter an order committing such child to some suitable State institution organized for the care of dependent or neglected children or to some training school or industrial school or to some association embracing in its objects the purpose of caring for or obtaining homes for neglected or dependent children, which association shall have been accredited as hereinafter provided.

Whenever a child is committed under the terms of this Act to an association embracing in its objects the purpose of caring for or obtaining homes for neglected or dependent children, which association shall have been duly accredited as provided by law, the court may enter an order upon the county to pay to such association in accordance with the terms of the decree of commitment, such amount of money as may be necessary for the tuition, maintenance and care of such child, and upon the accredited officer of such association rendering proper account therefor quarterly, the county board shall allow and order the same paid out of the county treasury, *provided*, that none of the moneys so paid to such association shall be used for any purpose other than the tuition, maintenance and care of such child. *Provided*, that no charge shall be made against the county on account of any dependent child in the care thereof who has been by such association put out to a trade or employment, *provided however* that no costs shall be chargeable as provided in this section for the support of a dependent or neglected child unless such child is a resident of this county, except where the parent, parents or guardian of such child are unknown or where the child's place of residence cannot be learned. And *provided further*, that before the entry of an order upon the county to pay for the support of such dependent or neglected child, the court shall find that the president or chairman of the county board has had due notice of the pendency of said cause.

If the parent or parents of such dependent or neglected child are poor and unable to properly care for the said child, but are otherwise proper guardians and it is for the welfare of such child to remain at home, the court may enter an order finding such facts and fixing the amount of money necessary to enable the parent or par-

ents to properly care for such child, and thereupon it shall be the duty of the county board, through its county agent or otherwise, to pay to such parent or parents at such times as said order may designate the amount so specified for the care of such dependent or neglected child until the further order of the court.

13. The California System

A. THE CONSTITUTION OF CALIFORNIA PROVIDES FOR SUBSIDIES

CONSTITUTION OF THE STATE OF CALIFORNIA, 1879,¹ ART. IV, SEC. 22

No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State; *provided*, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; *provided further*, that the State shall have, at any time, the right to inquire into the management of such institutions; *provided further*, that whenever any county, or city and county, or city, or town shall provide for the support of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances, such county, city and county, city, or town shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church or other control. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature.

¹ Compiled by Paul Mason, Sacramento, 1931, pp. 44-45.

B. A REPORT ON STATE AID IN CALIFORNIA

THIRD BIENNIAL REPORT OF THE DEPARTMENT OF SOCIAL WELFARE
OF THE STATE OF CALIFORNIA, JULY 1, 1930
TO JUNE 30, 1932

DIVISION OF CHILDREN'S AID; MILEY M. POPE
SUPERVISOR

Seven previous biennial reports have recorded the growth and development of California's oldest aid program. While the Statutes of 1880 permitted the granting of State aid to needy orphans, half orphans, and abandoned children, in institutions and in their own homes, and large sums of money were paid by the State to institutions and counties maintaining such children, it was not until 1913 that a children's department was created to supervise the administration of this aid.

Early history of state aid to children.—Prior to 1870 whatever aid was provided by the State was granted to private "orphan asylums" by special legislative enactment under provision of Section 23 of the Constitution of 1849 . . . [p. 31].

An act was approved in 1870 which provided for State donations to various institutions having orphans under their care, the sum of \$50 a year for every whole orphan and \$25 a year for each half orphan. The Legislature of 1873 raised these amounts to \$75 a year for orphans and \$50 for half orphans and abandoned children, and two years later to \$100 and to \$75 a year. While some institutions continued to secure direct appropriations in addition to the amounts allowed them under the specific act, by 1878 sixteen orphanages received State aid on the basis of the per capita rate. The records from 1870 to 1878 show that \$511,023 was paid by the State during that period toward the support of children in institutions.

The delegates who attended the Constitutional Convention in Sacramento in September, 1878, were agreed that the State had a clearly defined responsibility for children deprived of their natural guardians. Whether institutional provision should be the only type of care for the State to endorse was the question. Article IV, Section 22 of the Constitution adopted the following year, was the result of the debate, and empowered the Legislature to grant aid to *counties*

maintaining such children as well as to institutions. State subsidy for children in "orphanages" reached its peak in 1903, a total grant of \$374,857 for that year. After 1880 the counties began to claim for orphans and half orphans living in their own homes or with relatives. In 1914 the State granted aid for 2,451 children in institutions, a decrease from 4,875 in 1904. In contrast, grants to counties for children living outside of institutions increased from 2,407 in 1904 to 4,977 in 1914.¹

It was the Legislature of 1913 that emphasized the plan of the State to keep children in their own homes by permitting the county to match equally the amount paid by the State. Many mothers who had been struggling against uneven odds to keep their children with them welcomed this assistance, which prevented the breaking up of their homes. Some who had been forced to place their children in institutions for economic reasons were again able to reestablish their homes. The aid to mothers' program grew rapidly and it was not long before the half orphan group in their own homes comprised practically 80 per cent of the children assisted by the State.

The gradual use of the family boarding home and the development of the adoption program in the State were other factors that influenced the decreased in the number of children in institutions for whom the State gave aid [pp. 31-32].

14. Subsidies in Maryland in 1933-34

SEVENTEENTH BIENNIAL REPORT OF THE BOARD OF STATE AID AND CHARITIES OF MARYLAND, 1933-34

The State aids twenty-one homes for children (four of which are correctional institutions as well), three placement agencies, three day nurseries and two convalescent homes.

¹[A table on page 32, not reprinted here, shows that the number of children in institutions for whom state aid was paid was 904 in 1932 while 15,309 for whom state aid was claimed by the counties were not in institutions. More than 13,000 of these were with their mothers, and 1,500 in boarding-homes or with relatives. It is also interesting to note that between 1890 and 1900, when the population of California increased 22.4 per cent, the number of children on state aid increased 110 per cent; while in 1930, when the population had increased 65.7 per cent over 1920, the number of children under care had increased 44 per cent.—EDITOR.]

The service rendered by the homes for children is analyzed in considerable detail in the section of this report which presents the results of a State-wide census. A survey is being made of this group by the Board of State Aid and Charities, and it is expected that as a result of this survey, minimum standards of institutional care for children will be set [p. 36].

[TABLE 1]

NUMBER OF CHILDREN UNDER CARE OF MARYLAND HOMES FOR CHILDREN
OCTOBER 1, 1934, AND TOTAL RECEIPTS (OR INCOME) OF THE INSTI-
TUTIONS SHOWING SOURCE, OCTOBER 1, 1933, TO OCTOBER 1, 1934*

INSTITUTION	TOTAL UNDER CARE OCT. 1, 1934	CURRENT RECEIPTS (OR INCOME)			
		Total	State	City or County	All Other*
<i>For Dependent Children:</i>					
Boys' Home Society.....	28	\$ 11,140 58	\$ 1,750 00	.....	\$ 9,390 58
Children's Home of Baltimore, Inc.....	109	44,133.12	6,500.00	.....	37,633.12
The Children's Home of the Eastern Shore of Maryland.....	31	6,316 94	3,500 00	.....	2,816 94
General German Orphans' Home.....	55	19,420 80	3,750 00	.....	15,670.80
Maryland Home for Friendless Col- ored Children.....	28	2,926 44	500.00	.....	2,426.44
Nursery and Child's Hospital of Baltimore, Inc.....	76	31,890 42	4,500 00	\$ 3,936 90	23,453 52
St. Anthony's Home for Boys.....	66	7,360 15	3,000 00	.....	4,360 15
St. Elizabeth's Home.....	198	44,217.24	12,000.00	13,108.70	19,108.54
St. Frances' Orphanage.....	71	20,479 73	2,000 00	754 05	17,725 68
St. Katherine's Home for Little Col- ored Girls.....	30	6,621 57	1,250 00	4,558 40	813.17
St. Leo's Italian Orphanage.....	45	5,983 96	2,000 00	.....	3,983 96
St. Mary's Female Orphan Asylum.....	198	37,860.20	4,500.00	17,786 45	15,573 75
St. Mary's Home for Little Colored Boys.....	52	9,092 56	1,250 00	5,342.90	2,490 66
St. Peter Claver's Industrial School.....	107	4,444 45	3,000 00	.....	1,444 45
St. Vincent's Infant Asylum.....	110	48,216 64	14,500 00	11,000 00	22,716 64
St. Vincent's Male Orphan Asylum.....	130	34,640 58	9,000 00	17,522.45	8,118 13
Wicomico Children's Home.....	21	4,048 99	500 00	600 00	2,948 99
Total.....	1,555	\$338,803.37	\$ 73,500.00	\$ 74,609.85	\$190,693.52
<i>Also Functioning as Correctional Insti- tutions:</i>					
The House of The Good Shepherd of the City of Baltimore (White Girls).....	162	\$ 40,627.97	\$ 8,000.00	\$ 16,205.25	\$ 16,422.72
The House of The Good Shepherd for Colored Girls of the City of Balti- more.....	137	36,475.68	4,000.00	15,888.00	16,587.68
House of Reformation for Colored Boys, Cheltenham.....	430	118,823 00	20,000 00	85,471.06	13,352 03
St. Mary's Industrial School.....	692	185,404 22	60,000 00	78,265.83	46,778.39
Total.....	1,421	\$381,330 96	\$ 92,000.00	\$196,190.14	\$ 93,140.82
Total, All Homes for Children.....	2,776	\$720,134 33	\$165,500 00	\$270,799 99	\$283,834 34

* [In the case of five institutions "proceeds of loan" are included - St. Elizabeth's Home, St. Mary's Female Orphan Asylum, St. Vincent's Infant Asylum, the House of the Good Shepherd of the City of Baltimore, the House of Reformation for Colored Boys, Cheltenham.]

[TABLE 2]

NUMBER OF CHILDREN UNDER CARE OF MARYLAND CHILD PLACEMENT AGENCIES, OCTOBER 1, 1934, AND TOTAL RECEIPTS (OR INCOME) OF THE AGENCIES OCTOBER 1, 1933, TO OCTOBER 1, 1934

PLACEMENT AGENCIES	TOTAL UNDER CARE OCT. 1, 1934	CURRENT RECEIPTS (OR INCOME)			
		Total	State	City or County	All Other
Henry Watson Children's Aid Society	578	\$182,686 34	\$ 8,000 00	\$52,023 95	\$122,662 39
Jewish Children's Society	250	93,205 26	15,000 00	20,253 20	57,952 06
Maryland Children's Aid Society	154	25,045 88	17,500 00	5,681 23	2,464 65
Total Placement Agencies.	982*	\$301,537 48	\$40,500 00	\$77,958.38	\$183,079.10

* Includes 7 in institutions, 761 in boarding homes, 119 in free, work or wage homes, 70 in their own homes and 25 elsewhere.

[Pp. 44-45].

15. The Subsidy Problem in North Dakota in 1937

MARGARET LEAHY, CHILD WELFARE CONSULTANT AND ACTING DIRECTOR OF CASEWORK: BRIEF SUMMARY OF PROVISIONS FOR THE CARE OF DEPENDENT AND NEGLECTED CHILDREN IN THE STATE OF NORTH DAKOTA (PUBLIC WELFARE BOARD OF NORTH DAKOTA, 1937). (MIMEOGRAPHED)

The allocation of public funds to a private agency is called a subsidy. By definition a subsidy is a payment of Federal, State, or local tax funds to a private agency, either in a lump sum appropriation or on a per capita basis. It is now the consensus of opinion that public funds can best be expended by public agencies and private funds by private agencies. The fact that the Federal government required FERA funds to be expended by State and local public agencies instead of using them to subsidize private agencies is an indication of present trends in the field of relief. In the field of child care, the present tendency is to make all State appropriations for child care to the State child welfare authority with the stipulation that this agency make such payments to private agencies as are needed to carry on the child welfare activities of the State efficiently and effectively.¹

Objections to the subsidy system.—There are several objections to the subsidy method of financing for child care. The use of this system has tended to increase the number of private agencies, often-

¹ Arlien Johnson, *Public Policy and Private Charities* (Chicago: University of Chicago Press, 1931), p. 216.

times without regard to actual need for these additional services. Once the subsidy system is started, it becomes firmly entrenched and the State finds itself obligated to appropriate funds to all of the agencies although the standards may vary and the types of care may be uneven. It is difficult for States to enforce standards in agencies that are not their direct responsibility, especially those under religious denominations or racial groups. Since agencies under private auspices may choose their own locations and may limit their services to special types of cases, the State may need to make provision for its own agencies to serve in certain localities and to take care of cases not accepted by the private agencies.

In the days when institutional care was the customary type of care for children away from their own homes, the payment of subsidies to private agencies did eliminate the need of building public institutions for the care of children. However, now that foster home care is, in most instances, the most acceptable type of care when a child must be removed from his own home, the public agencies can provide these services with skilled case workers and without the outlay of capital that is needed for an institution.

The subsidy system in North Dakota.—In spite of recent trends, the North Dakota legislature has continued to make appropriations to the private child-caring agencies, subject to the supervision of the Board of Administration. The amounts appropriated have been the same for each agency although as the data in the preceding section indicated, there is wide variation in the case loads and in the types of service provided. Moreover, there is nothing in the law to prevent the agencies from getting additional subsidies from the counties for the children who also receive State aid . . . [pp. 41-43].

The subsidy system started in North Dakota in 1909 when the legislature appropriated an annual lump sum of \$3,000 to the Florence Crittenton Home in Fargo, a maternity home for the care of unmarried mothers and their infants. Gradually appropriations were made to all of the private child-caring agencies and maternity homes for unmarried mothers . . . [p. 43].

In view of section 185 of the State constitution, there was some question about the constitutionality of the lump sum appropriations to private charitable agencies. Although there was never a

test case, the attorney general ruled that appropriations on a lump sum basis were unconstitutional and in 1917 payments were changed to a per capita basis . . . [p. 45].

The only requirement exacted of the agencies for State aid has been the presentation of a monthly bill giving the name of the child and the amount desired for his support and maintenance. In most cases the bills have contained only the first name and the last initial of the child. The State has not required regular reports on the whereabouts of the child, the type of care he has received, or the payments from parents and relatives or from other sources. Prior to September, 1937, separate reports showing expenditures from county funds for subsidizing the work of private agencies were not required by the State office although from 75 to 100 per cent of the funds used for this purpose are paid from the State general relief appropriation. . . .

If April can be considered a typical month, the total subsidies to private agencies for 1937 will be more than \$50,000 and for the biennium, 1935-37, over \$100,000 or an average of approximately \$17,000 per agency [pp. 45-46].

STATE REGULATION OF PRIVATE AGENCIES AND INSTITUTIONS

16. Supervision of Subsidized Institutions in New York

A. REMOVAL OF CHILDREN FROM INSTITUTIONS UNDER THE ACT OF 1884

TWENTY-THIRD ANNUAL REPORT OF THE NEW YORK STATE BOARD OF CHARITIES FOR THE YEAR 1889

The Consolidation Act of 1884, chapter 438, section 4, reads as follows:

While any child which shall have been placed in such asylum, or other institution, as a pauper, in pursuance of the second section of this act, shall remain therein at the expense of the county or town to which such pauper child is chargeable, the superintendents of the poor of such county or the overseer of the poor of such town, may, in their discretion, remove such child from such asylum or other institution and place such child in some other such institution or make such other disposition of such child as shall then be provided by law. The name of no such child shall be changed while in such institution as in this section aforesaid. But no parent of such pauper child, so in such asylum or

other institution as in this section aforesaid, shall be entitled to the custody thereof except in pursuance of a judgment or order of a court or judicial officer of competent jurisdiction, adjudging or determining that the interest of such child will be promoted thereby, and that such parent is fit, competent and able to duly maintain, support and educate such child.

The Commissioners of Public Charities and Correction would, under this act, probably have the right to remove children supported by the city from institutions to which they have been committed, but practically such a course would be quite out of the question, as the Commissioners of Public Charities and Correction have too many other duties to be able to give any time or thought to this subject. As a fact, there is no one who is able to protect the child or the public. Even though the life in the institution may be unfitting him for future self-support, even though there may be a good home available for him among strangers, there is no one except the managers of the institution in which he is, empowered to find such a home and put him into it. The interests of the child and of the city are left unreservedly in the hands of persons who are, as a rule, all of them benevolent and desirous of doing right, but many of whom have not the knowledge which would enable them to judge what those interests are, while some of them do not think it their duty to inquire.

Almost all the institutions in which these children are housed, are far too large to allow of any individual love or oversight being bestowed upon the mass of the inmates, and they suffer from the many evils, physical, mental and moral, which are known to affect children congregated in large masses . . . [pp. 176-77].

B. THE STRONG REPORT ON STATE SUPERVISION OF CHILDREN'S INSTITUTIONS RECEIVING PUBLIC SUBSIDIES IN NEW YORK

REPORT OF CHARLES H. STRONG, COMMISSIONER TO EXAMINE INTO THE
MANAGEMENT AND AFFAIRS OF THE (NEW YORK) STATE BOARD OF CHAR-
ITIES, THE FISCAL SUPERVISOR AND CERTAIN RELATED BOARDS AND COM-
MISSIONS TO GOVERNOR WHITMAN (1916)

In 1874 the people adopted the report of the Constitutional Com-
mission of 1872 abolishing state aid to orphan asylums and similar

institutions,¹ but left untouched the field of local appropriations to such institutions.

In 1875 the State of New York entered upon the policy of reclaiming destitute children between the ages of three and sixteen from the almshouses and directing future commitments to orphan asylums or to the care of private families . . . [p. 10].

Efforts were made in the convention of 1894 to secure a prohibition of all public aid to sectarian institutions, but permitting such aid to other private institutions. These efforts failed. The ultimate issue came to be whether all public aid to all private charities should at once be abolished or whether there should be a new system of rules and regulations and enforcement thereof by the State Board of Charities . . . [pp. 10-11].

The president of the convention, Mr. Joseph H. Choate, said in substance that if it were an original question, he would be in favor of prohibiting the application of any public money to any private charity; but the state, by the Act of 1875, had deliberately entered "upon a scheme of using the agency of private charities for the purpose of taking care of these wards of the state, the helpless children who had nobody else to care for them"; and nobody questioned "the absolute duty of the state to provide for them in the way of care, maintenance, and of the same education that we give to other children of the state" . . . [p. 11].

The system of grants of public aid for the partial maintenance and training of dependent children in private institutions, which has come to be known as the "New York system," was regarded as entrenched by the leaders of the constitutional convention of 1894. It certainly is not less so to-day . . . [p. 91].

There are marked differences of opinion among those conspicuously identified with what are known as the private religious charities as to the wisdom of public grants to private institutions. Nota-

¹ [The section added to Art. VIII of the Constitution at this time was as follows: "Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the State for educational purposes."—EDITOR.]

ble among these was the late Thomas M. Mulry, member of the New York State Board of Charities, unselfish and devoted friend of the Roman Catholic and other charities and firm adherent of the "New York system." On the other hand, Mr. David F. Tilley of Boston, member of the Massachusetts State Board of Charity, also prominent in Roman Catholic charities, opposes public aid on the ground that it discourages private benevolence, asserts that private institutions without public aid are stronger than those with public aid, that it is difficult to withdraw support that is once extended, and that outside of New York the amount of public aid given to private Catholic institutions is insignificant. He recognizes special difficulties in the New York situation . . . [p. 92].

The comptroller furnishes figures showing that for the year 1913, the City of New York made to Protestant institutions for dependent children payments amounting to 43 per cent. of their total expenditure, including expenditures of maintenance of plant and equipment and fixed charges; to Jewish institutions 57 per cent.; and to Roman Catholic institutions 71 per cent. These payments are on a per capita basis and therefore uniform. The remainder of the expense is, of course, contributed by private benefactors. During the twenty years since 1896, about 82 per cent. of the institution population has consisted of public charges . . . [p. 93].

The Commonwealth of Massachusetts has a placing-out system that is famous the world over. All public aid for dependent children in that state is expended in this form. . . . If all the dependent children in Massachusetts were cared for in institutions, it would require 22 plants and equipment equal in size to its great Hospital School. The paid force that carries on this [placing out] work in Massachusetts is 1 superintendent, 1 deputy, 48 visitors and 29 other employees . . . [p. 96].

The department of Public Charities of New York City has recently, and for the first time in its history, resolved upon the exercise of the power conferred upon it in the charter to place-out children. A new Bureau of Child-Placing is to be formed. Babies are already placed-out by the asylums in large numbers. The Department is to attempt to place-out, instead of committing, as many children as practicable between the ages of 2 and 6. The City is to

pay \$3 per week for board and clothing wherever necessary [p. 97].

I find that under the provisions of the State Charities Law, Sections 301 and 304, the State Board is authorized to visit all foster homes, but that only public placing-out agencies are required to report to the State Board their placements (*Poor Law*, Sec. 106). The law should be amended so as to require all placing-out agencies to report their placements, in order that the State Board may be able to discharge its duty of visitation, and the State Board should be authorized to supervise all placing-out agencies, whether public or private, as to their methods of placing-out and the effectiveness of their visitation of the homes [p. 98].

The question remaining for consideration is, how has the State Board of Charities discharged its duty under the Constitution and the laws toward the private child-caring institutions in New York City. . . .

First, as to the rules. It is suggestive of the general attitude of the State Board that its rules were adopted after conferences with the representatives of the institutions which were to be subjected to them and with their approval and consent [p. 99].

Oddly, the State Charities Law since 1895 has required industrial training in the institutions, but there was no mention of it in the rules until 1910.

The President said he thought the board had once adopted a rule against corporal punishment. It met with a storm of disapproval. It was repealed. The rules now call for a record of punishment authorized, but are silent as to punishment actually employed [pp. 100-101].

Secondly, as to visitation, inspection and enforcement. The State Board's staff of paid inspectors grew from 3 in 1896 to 21 in 1915, falling to 19 in 1916; but of these only 8 inspect private institutions, and of these 8, only 3 or 4 are available regularly for children's institutions in New York City. Eight inspectors are relied upon to inspect 640 institutions once a year, 364 of which, including dispensaries, are in or near New York City [p. 101].

The most complete statement by the State Board as to educational conditions in the private institutions in New York City is

found in a comprehensive letter from Secretary Hebbard to Comptroller Prendergast in August, 1912. . . . The writer alleges variously as to the institutions, but summarily stated it is that the State Board found in 1912 that children of twelve had only two hours' school work daily, teaching force largely ill equipped, some children not in school at all, little industrial training except in caring for the institution, classes too large, progress not what it should be, industrial training confined to repairing shoes, such industrial training as was given had little educational value and usually did not proceed beyond the daily labor in caring for the institution . . . [p. 104].

When John Purroy Mitchel became Mayor in 1914, he named John A. Kingsbury, possessed of special attainments in the field of social welfare, as Commissioner of Public Charities, and specifically charged him to ascertain the condition of dependent children in the private institutions, recalling to him the work of the committee in 1911 . . . [pp. 105-6].

Commissioner Kingsbury's advisory committee in 1914 and 1915 investigated 38 institutions, one of which was a hospital. In the inquiry before me, they decided to rely upon 26 of these in support of the accusations of Commissioner Kingsbury against the State Board. Subsequently two were withdrawn, it appearing that there was some question of the City's right to commit thereto. The committee criticized the other 12 institutions, but not to such extent as to rely upon them to substantiate the charges. These 12 institutions were given favorable ratings by the committee . . . [p. 110].

On the controverted list, there were 12 Catholic, 14 Protestant and no Jewish institutions. On the non-controverted or good list of 12, there were 8 Catholic, 1 Protestant and 3 Jewish institutions. The committee's ratings of institutions on the controverted list were lower, as a rule, among the Protestant institutions than among the Catholic. One may draw such inferences from this as he desires. It has no significance for me, one way or the other . . . [p. 111].

Commissioner Kingsbury said, in his report to the Mayor:

Naturally when we found on the certified lists institutions in which the beds were alive with vermin, in which the heads of boys and girls were itching with uncleanness, in which antiquated methods of punishment prevailed, and in which the children were disgracefully overworked and underfed, we found it

necessary to decline to commit children to these institutions and to decline to accept as reliable the official reports of the State Board of Charities.

With some qualifications, this statement was correct. There was no institution of which all these things might have been truthfully said, nor do I understand the declaration to mean that there was [pp. 112-13].

There were twelve institutions, or one-half of those on the list, in which nits or vermin or both were found in the heads of some or many of the children. . . .

There were found institutions in which antiquated methods of punishment prevailed, not inhuman or even necessarily cruel, but indicating an utter misconception of the kind of discipline that will genuinely improve even an exceptionally unruly child; such punishments, for example, as striking a child on the head with a key, making him spend a part of his fifteen minutes at dinner standing with his face to the wall, making him sit on the floor behind the bed, making him wear bi-colored trousers, whipping large girls with a strap on the hands.

There were five institutions out of the 24 in which the older girls were overworked at hard institution labor, with little or no compensation, and were thereby cut off from opportunity for scholastic and real industrial or vocational training, but in only one or two cases would it be fair to say that they were "disgracefully" overworked.

There were three institutions in which the children were inadequately fed, and several more in which they were improperly fed, on the basis of minimum dietaries approved by the State Board of Charities and circulated among the institutions by that board [p. 113].

I find that the State Board of Charities was censurable for failure to issue certificates of non-compliance with its rules, or for failure to withhold certificates of compliance therewith, when and as often as they should have been issued or withheld, as to every one of the twenty-four institutions on the City's controverted list [p. 114].

I find it is beyond question that such vigorous, yet reasonable and just, action as the State Board might have taken from time to time prior to 1914 relative to these institutions, would have resulted

in such improved conditions as would have made unnecessary or futile the City's investigation in 1914 and 1915. . . .

The City has proved its case against the State Board out of the pages of the State Board's own inspection reports . . . [p. 115].

From 1895 to date, the board has once, and only once, issued a certificate of non-compliance with its rules, and this was in July, 1910, one day after the date of a report of inspectors of the Department of Finance in New York City reflecting most seriously upon an institution in Brooklyn. This institution is not one of those upon which the City's investigators reported adversely in 1914 or 1915. The record does not show what reason was given by the State Board for issuing this certificate of non-compliance . . . [p. 116].

When the City's investigating activities became fully apparent in 1915, 50 certificates on 37 institutions were withheld by the State Board. The Board had withheld the certificate as to only 8 out of the 24 institutions on the controverted list prior to the city's investigation. . . .

The board has never once resorted to its power under the State Charities Law to issue an order upon court approval directed to an institution when, upon an investigation of an institution, it appears that "inadequate provision" is made for "a condition necessary to their well-being" (which would seem to cover industrial and educational training as required by law). The State Board is empowered to issue this order on approval of the Supreme Court, after notice to the institution to apply such remedy as the board shall specify in the order. Disobedience of such order is a misdemeanor . . . [p. 117].

Even in a case where cruel and inhuman punishment in the form of shackles and chains was discovered by the State Board in an investigation of a private institution in Westchester County in 1895, the order was not issued and not even was the certificate withheld, as far as the record shows. . . .

The question naturally arises, what did the State Board do to enforce compliance? . . . [p. 118].

It sent its reports of inspection to the boards of managers. . . . There was a table of "Needs and Defects" in each report. But im-

portant criticisms continued in the body of the report were often not included in the list of "Needs and Defects." This in and of itself was not calculated to impress the managers. A number of "Needs and Defects" were carried in the reports from year to year in precisely the same language. This also was not a particularly incisive method of getting the managers to take notice. It wrote letters. It has several forms, printed or partly printed, to fit various sets of circumstances. . . . The President and Secretary in numberless instances followed this up by more letters in cases where institutions did not respond satisfactorily. Sometimes improvements were secured; sometimes, as I have said, the same list of "Needs and Defects" persisted in the reports year after year . . . [p. 119].

Patient persuasion is the avowed policy of the State Board. Never go to court; only once in 21 years directly interfere with commitments; rarely delay the institution in getting its money from the City; never make public any criticism of any abuse . . . [p. 120].

We have seen what are the methods of the State Board in enforcing its recommendations. They may be contrasted with those of the [City] Department of Public Charities.

1. The Department sent the reports of the advisory committee to superintendents as well as to the managers of each of the affected institutions (the State Board sends only to the managers) . . . [pp. 121-22].

2. It sent the reports to the State Board. . . .

3. It ceased commitments to 15 of the 24 institutions, and at the close of the hearings it had not resumed in 8 cases. Ceasing to commit was a spur to institution improvements because the per capita cost of maintenance goes up as the number of inmates goes down.

4. It refused in some cases to certify the monthly bills of the institution against the City. This served the same purposes.

5. It resorted to publicity in the newspapers. In Mr. Doherty's address before the Baltimore Conference in May, 1915, some of the reports containing serious criticisms of institutions were made public. In that address, Mr. Doherty apportioned the blame for conditions among the boards of managers, the [New York City] Department of Public Charities and the State Board of Charities.

6. It issued a document consisting of standards for inspectors, called "The Questionnaire" [pp. 122-23].

It is my view that, in the last analysis, the City's investigation of 1914 and 1915, over and above all the resentments that have been aroused, has been of incalculable value to the children in the institutions. Evidences of this multiply. . . . The [New York City] Department of Public Charities has organized its first Bureau for Child Placing. The Association of Catholic Charities has announced that it would "appoint an auxiliary to follow the inspections of the authorities in the attacked institutions" [pp. 123-24].

But it is also my view that under the constitution and the laws, we must continue to look, to the State Board of Charities, with its rule-making power, to establish and enforce reasonable and enlightened standards for the private institutions. Its duty of inspection and supervision is primary, is superior. It *must* inspect. The City *may*. If institutions with their self-perpetuating boards of managers are left without a spur, it is not surprising that they follow the easy path, that they are content with the old methods, content to furnish perhaps the best of bodily care and fail to grapple with the more difficult questions of education and training. . . .

The persistent explanation or excuse of the State Board throughout the inquiry for failure to enforce upon the institutions full and reasonably prompt observation of its own rules was that the institutions had not the money, that the City will not give it, and that to close the institutions would leave the City in a quandary. . . . The State of New York has deliberately thrown the care of dependent children upon the cities. If the City chooses to aid private institutions then the State Board must fix the standards and the City and the institutions must pay the price [pp. 124-25].

I do not share the aversion with which the State Board shrinks from publicity as a method of enforcement of its recommendations to end abuses. I cannot comprehend it. Publicity, in the relation between a state department and a private institution holding any religious faith is essential. This is one of the few instances where church and state come into contact. In this country, there may not

be permitted to grow up any subservience of the state to the church. I concur in the view that the state must always dominate the partnership between it and the private institutions . . . [p. 126].

C. DEPENDENT CHILDREN IN NEW YORK STATE IN 1934

"REPORT OF THE NEW YORK DIVISION OF CHILD WELFARE TO THE COMMISSIONER OF SOCIAL WELFARE," SIXTY-EIGHTH ANNUAL REPORT OF THE NEW YORK STATE BOARD OF SOCIAL WELFARE FOR THE YEAR ENDING JUNE 30, 1934

The Public Welfare Law makes county commissioners of public welfare responsible for the care of destitute children apart from their parents, of defective and physically handicapped children, and of children born out of wedlock, except that cities may care for such children under general, special or local law. The cities of New York, Kingston, Newburgh and Oswego and the town of Union exercise these responsibilities under general or special laws and the cities of Elmira, Saratoga Springs and Syracuse do so under local laws. . . .

While there may be some disagreement as to the interpretation of these statistics, it seems fair to consider them in the light of information coming from other sources, and to conclude:

First, that there has been no marked increase in delinquency among children under the age of sixteen. . . .

Second, the number of children under institutional care as public charges for destitution or improper guardianship increased slightly up to 1929, rather strikingly up to the end of 1932, but declined in 1933. The number of children cared for in the same group of institutions as private charges has decreased steadily during the ten-year period and the total number of children remaining in institutional homes has declined slightly but fairly steadily to a low point at the end of 1933. Not only is there no need for any increase in institutional home accommodations in the State but it is evident from the reports of individual institutions that in many cases such accommodations are now in excess of the demands made upon them. This situation suggests that the boards of managers of private child-caring institutions generally should carefully examine their programs of work in relation to local conditions and determine the needs of their communities in the whole field of child welfare.

Third, the use of boarding homes for the care of dependent children has grown steadily throughout the entire period from slightly over 4,000 to more than 19,000, an increase of approximately 375 per cent. The State Departments of Social Welfare and of Health have, for several years past, advocated extensive changes in the existing system of licensing homes in which children are cared for at board. Repeated attempts to secure new legislation were finally successful in the enactment of chapter 802 of the *Laws of 1934* which, in brief, transfers responsibility for the licensing of such homes to the State Department of Social Welfare and increases its supervisory responsibility. The Department is thus given the important duty of insuring the welfare of nearly 20,000 children in foster homes widely scattered throughout the State. It is evident that this duty cannot be performed unless a sufficient appropriation is made to provide for the necessary administrative, field and clerical staff and other necessary expenses.

Fourth, the number of children cared for through allowances made by boards of child welfare has increased steadily from nearly 32,000 to over 55,000 or approximately 72 per cent [pp. 17-21].

17. Supervision through Incorporation

"AN ACT RELATIVE TO THE INCORPORATION OF CHARITABLE CORPORATIONS OR HOMES FOR THE CARE AND SUPPORT OF MINOR CHILDREN," MASSACHUSETTS ACTS AND RESOLVES, 1901, CHAP. 405

SECTION 1. Before the secretary of the Commonwealth shall issue a certificate for the incorporation of a charitable corporation or home for the care and support of minor children he may forward a statement to the state board of charity, giving a list of the names of the persons who have asked to be incorporated, the purpose of the organization as stated by the applicants, and all other facts which may be set forth in the application for incorporation. It shall be the duty of the state board of charity immediately to make an investigation as to the persons who have asked to be incorporated and as to the purpose of the incorporation, and any other material facts relating thereto; and the state board shall forthwith make a report to the secretary setting forth all the facts ascertained by it. If in the opinion of the secretary of the Commonwealth it shall appear from the

report of the board or otherwise, that the probable purpose of the formation of the proposed corporation is to cover any illegal business, or that the persons asking for incorporation are not suitable persons to have charge of minor children, from lack of financial ability or from any other cause, then the secretary of the Commonwealth shall refuse to issue his certificate and the organization shall not be incorporated.

SEC. 2. In case the secretary of the Commonwealth shall refuse to issue his certificate the persons asking to be incorporated may appeal to the superior court, which shall hear the case and finally determine whether or not the certificate of incorporation shall be issued.

SEC. 3. This act shall take effect upon its passage.

18. The Oregon Law on the Incorporation, Licensing, and Supervision of Private Agencies, 1930

OREGON CODE, 1930

33-702. *Approval of agencies—points based on.*—The approval of the child welfare commission of a proposed child-caring organization shall be based upon reasonable and satisfactory assurance upon the following points:

- a) The good character and intentions of the applicant;
- b) The present and prospective need of the service intended by the proposed organization;
- c) The employment of capable, trained or experienced workers;
- d) Sufficient financial backing to insure effective work;
- e) The probability of permanence in the proposed organization or institution;
- f) That the methods used and the disposition made of the children served will be in their best interests and that of society;
- g) Wise and legally drawn articles of incorporation of institutional charters, and related bylaws;

h) That in the judgment of said state authority the establishment of such an organization is desirable and for the public welfare [L. 1919, chap. 405, § 4, subd. 3, p. 734; O. L. § 9820].

33-703. *Charter certificate necessary—penalty for violation.*—No private child-caring agency, society, or institution shall receive a

certificate of incorporation or institutional charter from the corporation commissioner, nor shall any proposed or heretofore unincorporated agency, society, or institution engaged in child-helping work receive one, unless there shall first be filed with the corporation commissioner the commendatory certificate in relation thereto of the child welfare commission. Any violation of this section by any attempt to evade the securing of such certificate shall be a misdemeanor punishable by a fine not exceeding one hundred dollars (\$100). The child welfare commission shall charge no fee for the examination of a proposed agency, society or institution, or one heretofore unincorporated, and the fee for the certificate of recommendation shall be limited to one dollar (\$1) and the fee to the corporation commissioner for the approval of the articles of incorporation or charter shall not exceed five dollars (\$5) [L. 1919, chap. 405, § 4, subd. 4, p. 734, O. L. § 9821].

33-704. *Agencies subject to requirements of act.*—All child-caring agencies, societies or institutions legally incorporated or chartered in this state previous to the passage of this act, shall be subject to all of its requirements, except such as relate to forms of organization and the obtaining of articles of incorporation or charters; and all amendments to previously approved articles of incorporation or previously granted charters, shall take the same course and meet the same requirements as are provided in regard to new and original articles of incorporation or institutional charters [L. 1919, chap. 405, § 4, subd. 5, p. 734, O. L. § 9822].

33-705. *Annual certificate of approval required—fee—penalty for violation.*—All private agencies, societies or institutions incorporated or chartered under this act, or previously incorporated or chartered and approved under this act, and engaged in child-caring work, including the taking of children into guardianship, the placing out of children in family homes, and the temporary or long continued institutional care of children, shall obtain annually from the child welfare commission a certificate of approval authorizing their work subject to the following regulations:

- 1) The child welfare commission shall use the eight points of excellence enumerated in section 33-702 as the basis of judgment in the granting or withholding of such certificates.

2) In order that this requirement shall cause no financial hardship to any worthy institution, the fee to be paid for such certificates to the child welfare commission shall be limited to one dollar (\$1).

3) Any organization engaging in child-caring work without such certificate of approval shall be guilty of a misdemeanor, and punished by a fine of not exceeding one hundred dollars (\$100) for each child placed out or made an inmate of an institution, during the time it operates without such certificate of approval, said fine to be assessed by any court of competent jurisdiction upon presentation of evidence of such action. The provisions of this act shall apply to private institutions for the combined care of adults and children where the work for children includes more or less of continued care, and the character of the institution is charitable and altruistic and not for financial gain or profit. [*L. 1919*, chap. 405, § 4, subd. 6, 7, p. 734; O. L. § 9823].

19. A Recent Utah Statute on Child Placement

LAWS OF THE STATE OF UTAH, 1937, CHAP. 16

'Placing Out of Children, An Act Amending Sections 14-3-1, 14-3-2, 14-3-3, 14-3-4, 14-3-5, Revised Statutes of Utah, 1933, Relating to Placing Out of Children, Granting the State Department of Public Welfare Jurisdiction over the Placing Out of Children and the Authority to Make All Rules and Regulations Governing Child Placing Agencies, and Relating to Transfer of Permanent Care of Children under Sixteen Years of Age'

SECTION 1. *Sections amended.*—Sections 14-3-1, 14-3-2, 14-3-3, 14-3-4, 14-3-5, Revised Statutes of Utah, 1933, are amended to read as follows:

14-3-1. *License required.*—No person, agency, firm, corporation or association shall receive or accept a child under sixteen years of age for placement or adoption, or place such a child either temporarily or permanently in a home other than the home of the child's relatives within the second degree, or solicit money for the purpose of child placing, without having in full force a written license from the state department of public welfare.

14-3-2. *Records to be kept—standards for agencies—transferring of custody limited.*—(a) Every agency licensed as herein provided to

receive, secure homes for, or otherwise care for children, shall keep a record containing the dates and places of birth, the names, ages and former residences of all children received; a statement of the physical and mental condition of such children by a competent physician; the names, former residences, occupations, and character so far as known of the parents; the dates of reception, placing out and adoption, together with the name, occupation and residence of the person with whom the child is placed; the date and cause of removal to any other home, the date and cause of termination of guardianship; and a brief history of each child and such other facts as the department shall require until he shall have reached the age of eighteen years or shall have been legally adopted or discharged according to law.

b) The state department of public welfare shall adopt and make available minimum standards required of agencies seeking license under this act and shall make rules and regulations in harmony with approved standards for the conduct of such agencies as shall be granted a license as herein provided.

c) No person shall hereafter assign, relinquish or otherwise transfer to another, other than a relative of the child within the second degree, his rights or duties with respect to the permanent care or custody of a child under sixteen years of age, unless specifically authorized or required so to do by an order or decree of court or unless the transfer is made to or by an agency licensed by the state department of public welfare to receive and place children as herein provided. Any attempted transfer or assignment written or otherwise made in violation of this section shall be null and void.

14-3-3. *Placement of children from without state.*—Every child brought into or sent into the state for placement or adoption in the state shall be sent to and placed by an agency licensed under the provisions of this chapter.

14-3-4. *Investigation of agencies—renewal of license annually.*—It shall be the duty of the state department of public welfare to pass annually on the fitness of every agency which receives or accepts children for placement or adoption or places children in private homes. Annually, at such times as the department shall direct, every such agency shall make a report to the state depart-

ment of public welfare, showing its condition, management and competency to adequately care for such children as are or may be committed thereto or received thereby, the system of visitation employed for children placed in private homes, and such other facts as the department may require. When the department is satisfied that such agency is competent and has adequate facilities to care for such children, and that the requirements of the statutes covering the management of such agencies are being complied with, it shall issue to the same a license to that effect, which shall continue in force for one year, unless sooner revoked by the department.

14-3-5. *Violations a misdemeanor.*—Every person, agency, firm, corporation or association violating any of the provisions of this chapter or who intentionally makes any false statement or report to the state department of public welfare with reference to the matters contained herein is guilty of a misdemeanor.

20. State Supervision of Child Welfare Agencies

KATHRYN H. WELCH: *THE MEANING OF STATE SUPERVISION IN THE SOCIAL PROTECTION OF CHILDREN* (UNITED STATES CHILDREN'S BUREAU PUBLICATION No. 252; WASHINGTON, D.C., 1940)

Starting a new program.—Since the supervisory program should be regarded as a co-operative project between the department and the agencies, the foundation for the successful development of State supervision is an understanding relationship between the State welfare department and the child-welfare agencies. The chief objective for the first year or two should be development of such mutual understanding. At the very start of the program the department should undertake to allay any apprehension of agencies that their activities are to be controlled through the program. The agencies should be given an opportunity to become acquainted with the personnel responsible for supervision and should be given an interpretation of the meaning of supervision. Likewise, it is important to study and analyze the problems of each agency and to develop a suitable educational program throughout the State.

The difficulty of breaking down barriers built up through misunderstanding or unpleasant experiences makes it important for the

early associations with the agencies to be pleasant and at the same time profitable. The concept of State supervision which many of the agencies have is determined by the attitude of the State worker with whom they are first associated. If the approach of this worker is dominant, superior, and critical, the idea of the supervisory program will be colored by such characteristics and any apprehension which they may have had in regard to the program will be increased. On the other hand, if the attitude of the worker shows she has an understanding of the problems of the agency and can be helpful, the concept of supervision as a co-operative program will be promoted. The acceptance by the agencies of this concept of supervision in the beginning of the program will be a great asset in developing an effective service.

An understanding of the differences in the background, development, and resources of the agencies should be the basis upon which service to each agency is developed. . . .

Standards of care and service.—In many States legislation relating to the supervision of child-welfare agencies specifies that the State agency must prescribe rules and regulations or establish standards of care and services to which agencies must conform. The procedure used in the formulation of such requirements and their content are of vital concern to both the State department and the agencies. Although the phrase "prescribed rules and regulations" has a more authoritative connotation than the phrase "established standards of care," this should not affect the use of sound procedure in the formulation of standards essential to adequate care of children. The formulation of standards should be a project participated in by both the agencies and the State department, since standards imposed by a State agency are never so effective as those that the agencies subscribe to and impose upon themselves.

There are many aspects of child care and services that must be considered in formulating standards. Some of these may be applicable only to institutional care and others only to foster-home care, but there are other general standards, such as conditions affecting the health of children and health services, that are common to both forms of care. The participation of the State health department in establishing standards of this aspect of care is of the greatest value in

increasing knowledge of health resources and health problems that need consideration.

Proposed standards for consideration by the agencies and the State department may be formulated by committees of agency representatives appointed at agency meetings or by the State department after consultation with groups of agencies. Study of such proposed standards by each agency and in group meetings will insure understanding of their meaning and may also lead to a more comprehensive or more detailed formulation of the standards agreed upon in a final conference. It is evident that the establishment of standards of child care and service is not a first step in a supervisory program but rather the culmination of an educational program to strengthen the work of the agencies and to enlist their interest in safeguarding the care of children throughout the State. If the procedure of formulating standards is unhurried and extends over a period of a year or more, there may be additional benefits to be realized by the longer time available for assimilation of the discussion.

There may be great variation in the financial resources, quality of personnel, and standards of care of the agencies within a State. It is, therefore, the responsibility of the State department to use every possible constructive measure and procedure to narrow the gap that exists between the standards of the best-qualified agencies and those that represent the maximum attainment of the weakest agencies. During the time when standards of care are being developed, situations may arise which make it necessary for the State department to require certain procedures that are essential for the health and social welfare of children. When this is necessary, the department should make available any special services needed to make the changes possible.

The use of a license.—The number of States in which every agency must receive a license from the State welfare department is steadily increasing. There are some variations in these States, however, in the significance given to the licensing process and in the methods of using a license. When every agency must be licensed, a license represents approval of the continued operation of an agency but may not always represent approval of all the features of its program. Ac-

ceptance of this general principle meets the objection that a license automatically represents approval of the work of an agency. The experience of several States seems to indicate, however, that there are definite advantages in some of the methods used for differentiation in licenses.

For those child-welfare agencies whose standards of care and service are questionable, the use of a tentative or provisional license may be desirable. Although such a license may not be authorized by legislation, the State department may inaugurate its use as an administrative measure. The issuance of provisional licenses to agencies whose continued operation cannot be fully approved presents the existence of unlicensed agencies or their immediate closing without opportunity to improve their work. A provisional license may be a stimulus to agencies to qualify for a full license. To make the use of a provisional license effective, a time limit of a year or more should be set during which an agency may operate under such a license.

The use of licenses that designate the types of work the agencies are equipped to undertake and the number of children that they can care for adequately is steadily increasing. Such licenses indicate whether an agency is to operate an institution, to place children in family homes, or to engage in both types of service. Placement of children in family homes is a highly specialized service, requiring quite different techniques and procedures from those used in the past. Further differentiation is made in some States in the license issued to child-placing agencies. In order to protect children permanently separated from their families, only agencies having a satisfactory program and a well-equipped staff are authorized to accept permanent guardianship of children or to place children in homes for adoption. As a means of reaching a thorough understanding with an agency as to the type of work to be undertaken and indicated in the license, the State department should discuss the matter and reach an agreement with the agency before issuing the license.

The licenses in many States also specify the number of children of different ages and sex agreed upon by the agency and the department as the maximum for whom care should be undertaken. In determining the number of children who can be cared for adequately by an agency, consideration should be given to such factors as the

capacity of the agency, the size and quality of the staff, the budget, and the availability of special services such as medical and dental care, recreational resources, and facilities for meeting particular needs of children. Better standards of care will be promoted by limiting an agency's service to the number of children whom it can serve well, thus emphasizing quality rather than quantity of service. Overcrowding in institutions will be eliminated and general improvement in the care of children will be made. While it should be recognized that the immediate reduction of the population of an agency may not be possible or practicable, the department from year to year, in conference with the executives and board members of an agency, may encourage reduction in the number of children accepted, with consequent improvement in the care given.

Annual licenses may be issued to all the agencies on a particular date or they may be issued at different times throughout the year. When licenses for all agencies fall due on a certain date, it is likely that less time will be available for the careful consideration of each agency that is desirable. By licensing a few agencies each month it may be possible to give more detailed consideration to the individual agencies. However, either plan may be used satisfactorily. Placing upon the agencies responsibility for initiative in obtaining a license by making formal application is a sound practice. In submitting an application for a license, the board of an agency must review various aspects of its services in order to determine for what type of work a license is desired. Making application for a license affords opportunity to the board for consideration of the supervision program and its significance to the agencies.

Refusal of a license to an agency should never be characterized by procedures of a punitive nature. It is preferable always to notify an agency of its failure to qualify for a license well in advance of the time when a license is due. If this is done it may be possible to make changes which will qualify the agency for a license. Special assistance may be given in order to improve the work of an agency before the time of licensing. Since there are no positive gains to be realized when a license is withheld and the agency continues to operate, a definite understanding should be reached with the governing board several months before a license is due to the effect that improvements are to be made or the agency will be closed.

SECTION II

INTERSTATE PLACEMENT OF DEPENDENT CHILDREN

INTRODUCTION

The movement for the regulation of the placement of children across state lines antedated the assumption by the states of responsibility for licensing and supervising the private agencies and individuals caring for the local dependent children. This early interest in the importation of children was due to the desire of the states to protect themselves against the burden of dependency and delinquency which they considered originated outside their boundaries and was therefore not their responsibility. It is not surprising that the regulation of interstate placement began in the Middle West, where so many New York children had been placed without an adequate knowledge of the children or an investigation of the resources and character of the foster-parents. That some were found to be defective and some became delinquent and larger numbers became dependent is not surprising. However, the regulation did not come during the period when a stream of children was being directed to these states by the New York Children's Aid Society (p. 138), but after the states had become populous, had their own problems of child dependency, and were no longer welcoming all settlers young or old.

Michigan passed the first law regulating interstate placement in 1895.¹ It required that any person, society, or asylum placing children from another state in Michigan must file with the county probate judge a bond protecting the county from future support of the child. In 1899 laws regulating interstate placement were passed in Indiana,² Illinois,³ and Minnesota⁴ and were widely copied by

¹ *Michigan Public Acts of 1895*, No. 33, p. 120. An earlier law (1887, No. 192, p. 207) regulated apprenticing, binding, or other disposal of any minor child.

² *Indiana Laws, 1899*, chap. 29, p. 41.

³ *Illinois Laws, 1899*, p. 136, sec. 16 of "An Act To Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children."

⁴ *Minnesota General Laws, 1899*, chap. 138, p. 138.

other states during the next fifteen years. In contrast with the early Michigan Act, these laws required the approval of the bond by the state board of charities before a child could be brought into the state for placement and contained some provisions for enforcement of the conditions stipulated in the bond. These conditions were usually that defective or incorrigible children should not be brought into the state and that the foster-parents should enter into a written contract to provide proper care and removal from the state by the placement agency if the child became a public charge because of dependency or delinquency during his minority.¹

The state department was for obvious reasons a much better agency for the enforcement of these requirements than a local court or board of county commissioners. However, protection of the state against the future dependency of the children by a bond did not solve the problem as enforcement presented many difficulties. Moreover, some states stipulated so high an amount as to discourage placement in desirable homes.² This may have been the object of the laws, but they cannot be described as reasonable regulations.

The laws passed by Michigan in 1915,³ Minnesota in 1919,⁴ and Virginia in 1922⁵ represented a different and more constructive approach to the whole problem than had the earlier laws. In these states it was found that guarding the foster-child by insuring placement in an approved home was also a means of protecting the state against their becoming public charges. With this end in view the requirement of advance approval by the state of a home in which a child from outside the state was to be placed, supervision and reports as to the success of the placement, and removal of the child

¹ The history of the legislation and the problems involved are discussed by Emelyn Foster Peck (*Laws Relating to Interstate Placement of Dependent Children* [U.S. Children's Bureau Publication No. 139; 1924]). A mimeographed memorandum on "Laws Relating to Interstate Placement of Dependent Children," by Carl A. Heisterman, was issued by the Children's Bureau in January, 1932.

² E.g., a blanket bond of \$10,000 was required in Indiana (*Burns' Annotated Statutes*, 1914, secs. 3670-74), Kentucky (*Carroll's Statutes*, 1922, secs. 331C-1-331C-4), Maryland (*Annotated Code*, 1924, Vol. II, Art. 88A, secs. 14-16).

³ *Michigan Compiled Laws*, 1915, secs. 2001-8.

⁴ *Minnesota Extra Session Laws*, 1919, chap. 51, sec. 5.

⁵ *Virginia Acts of the General Assembly*, 1922, chap. 103, p. 152.

if he became a public charge or a social menace brought interstate placement in line with advancing standards for intrastate placement. The Minnesota and Virginia statutes are very much alike, except that Minnesota requires a penal bond from the importing person, while Virginia requires an agreement with the state as to the obligations the foster-parent assumes with reference to the child and the state. These laws have been widely copied in other states.

A number of states¹ now require advance investigation and approval of the proposed foster-home or adoptive home as suitable before a placement is made. Another group of states² require prior approval by the state department before an out-of-state child can be brought in for placement—a policy that can also be made the basis for approval of the home before importation of the child is permitted. Some states license an out-of-state agency to place children in the state, using then the same or occasionally higher standards in licensing the agency and supervising its placement work than the state requires of its local licensed agencies.

By 1935 thirty-four states had laws regulating the importation of children, but some eight³ of these may be said to be so inadequate in their administrative provisions that neither the imported children nor the state is protected. With better organization of state departments mutual co-operation has made more easily possible the carrying-out of the purposes of the better laws. Concern for the exported child has led to their inclusion in this type of protective legislation in as yet only seven states.⁴

Under present-day standards of investigation and supervision placement in foster-homes at a great distance is so costly that the policy has been or is in process of being abandoned by agencies which formerly used it extensively. The New York Children's Aid Society, not the only one which developed this practice in the last

¹ Georgia, Michigan, Minnesota, North Carolina, Rhode Island, South Carolina, Texas, Virginia, and Wisconsin.

² Alabama, Connecticut, Delaware, Indiana, Iowa, Maryland, Massachusetts, New Jersey, Pennsylvania, and Vermont.

³ Kansas, Missouri, Nebraska, Nevada, Oregon, Tennessee, West Virginia, Wyoming.

⁴ Alabama, Iowa, Minnesota, North Carolina, Rhode Island, Virginia, Wisconsin.

century but the one that used it on a grand scale, still has some children placed in many parts of the country. But the numbers are very much reduced, and the Society is said to be in process of liquidating the whole program of distant placements. As the necessity of providing boarding care for large numbers of children has been demonstrated, the struggle to provide free homes has grown less. Moreover, the West is no longer regarded as a region presenting unparalleled opportunity for the poor. Interstate placements in adjoining states present fewer difficulties, and this practice is still continued. Occasionally because of special ties that will be useful to the children, placement at a great distance is justified; in such cases the requiring of investigation and supervision by a state department or a local agency is useful.

The transportation of children from England to Canada (p. 157) is of special interest because it developed on a large scale in the present century. While some children were sent from England to Canada very much earlier, the system, as a witness before the Royal Commission on the Poor Laws of 1909¹ said, was not "perfected" until 1898, and the *Guardians* were at that time not taking "full advantage of it" because there was a "feeling that the best children are wanted in England." The Canadian immigration authorities desiring to stimulate British settlement in the provinces under the Empire Settlement Act of 1922, encouraged the sending of dependent children to Canada. While under this Act Canada participated in the selection of the children sent and the societies receiving and placing them in Canada were under supervision, administrative responsibility for the program was lodged in the Canadian Immigration and Colonization Department which had no appreciation of problems presented by such a program but was concerned only with increasing the British population of the Dominion. The intelligent and aggressive campaign of the Canadian Child Welfare Council brought the whole subject to the attention of Canada and Great Britain (p. 157) and led to a better formulation of the policy to be followed. The number of imported children has so greatly decreased in recent years that unless this practice is resumed the problem

¹ Appendix, Vol. 1, ¶ 3479 (Cd. 4625).

seems to be solved.¹ This has been accomplished not by the amendment of the Empire Settlement Act of 1922² under which the program was greatly extended but by a change in administrative policy doubtless made because of the public criticism and also because of the general restriction of immigration during the depression period.

GRACE ABBOTT

¹ The Canadian Department of Immigration and Colonization reports 4,281 children imported from Great Britain during the fiscal year 1930 (*Report of the Department*, p. 86), approximately half that number in 1931 (*Report of the Department*, p. 90), while in the fiscal year 1936 only 41, a single party of children between eight and ten years of age all destined to a farm school on Vancouver Island were imported (*Report of the Department*, p. 97).

² 12 & 13 George V, chap. 13.

1. The System Developed by the New York Children's Aid Society

CHARLES LORING BRACE:¹ THE DANGEROUS CLASSES OF NEW YORK
AND TWENTY YEARS' WORK AMONG THEM (NEW YORK, 1872)

The founders of the [New York] Children's Aid Society early saw that the best of all Asylums for the outcast child, is the *farmer's home*.

The United States have the enormous advantage over all other countries, in the treatment of difficult questions of pauperism and reform, that they possess a practically unlimited area of arable land. The demand for labor on this land is beyond any present supply. Moreover, the cultivators of the soil are in America our most solid and intelligent class. From the nature of their circumstances, their laborers, or "help," must be members of their families, and share in their social tone. It is, accordingly, of the utmost importance to them to train up children who shall aid in their work, and be associates of their own children. . . . With their overflowing supply of food also, each new mouth in the household brings no drain on their means. Children are a blessing, and the mere feeding of a young boy or girl is not considered at all . . . [p. 225].

Emigration.—Simple and most effective as this ingenious scheme now seems—which has accomplished more in relieving New York of youthful crime and misery than all other charities together—at the outset it seemed as difficult and perplexing as does the similar cure proposed now in Great Britain for a more terrible condition of the children of the poor.

Among other objections, it was feared that the farmers would

¹ [Mr. Brace (1826–90) founded the Children's Aid Society of New York in 1852. He was its executive secretary until his death. In addition to placing homeless children in family homes in the country, the society was instrumental in establishing free kindergartens, schools for crippled children and mental defectives, and free dental clinics, and was also responsible for appointment of school nurses and truant officers. Brace achieved an international reputation as a pioneer in the child-caring field. See *Life of Charles Loring Brace*, edited by his daughter (New York: Charles Scribner's Sons, 1894). —EDITOR.]

not want the children for help; that, if they took them, the latter would be liable to ill-treatment, or, if well treated, would corrupt the virtuous children around them, and thus New York would be scattering seeds of vice and corruption all over the land. Accidents might occur to the unhappy little ones thus sent, bringing odium on the benevolent persons who were dispatching them to the country . . . [p. 226].

These and innumerable similar difficulties and objections were offered to this projected plan of relieving the city of its youthful pauperism and suffering. They all fell to the ground before the confident efforts to carry out a well-laid scheme; and practical experience has justified none of them.

To awaken the demand for these children, circulars were sent out through the city weeklies and the rural papers to the country districts. Hundreds of applications poured in at once from the farmers and mechanics all through the Union. At first, we made the effort to meet individual applications by sending just the kind of children wanted; but this soon became impracticable.

Each applicant or employer always called for "a perfect child," without any of the taints of earthly depravity. The girls must be pretty, good-tempered, not given to purloining sweetmeats, and fond of making fires at daylight, and with a constitutional love for Sunday Schools and Bible-lessons. The boys must be well made, of good stock, never disposed to steal apples or pelt cattle, using language of perfect propriety, and delighting in family-worship and prayer-meetings more than in fishing or skating parties. These demands, of course, were not always successfully complied with . . . [pp. 227-28].

Having found the defects of our first plan of emigration, we soon inaugurated another, which has since been followed out successfully during nearly twenty years of constant action.

We formed little companies of emigrants, and, after thoroughly cleaning and clothing them, put them under a competent agent, and, first selecting a village where there was a call or opening for such a party, we dispatched them to the place.

The farming community having been duly notified, there was usually a dense crowd of people at the station, awaiting the arrival

of the youthful travelers. The sight of the little company of the children of misfortune always touched the hearts of a population naturally generous. They were soon billeted around among the citizens, and the following day a public meeting was called in the church or town-hall, and a committee appointed of leading citizens. The agent then addressed the assembly, stating the benevolent objects of the Society, and something of the history of the children. The sight of their worn faces was a most pathetic enforcement of his arguments. People who were childless came forward to adopt children; others, who had not intended to take any into their families, were induced to apply for them; and many who really wanted the children's labor pressed forward to obtain it. . . .

The committee decide on the applications. Sometimes there is almost a case for Solomon before them. Two eager mothers without children claim some little waif thus cast on the strand before them. Sometimes the family which has taken in a fine lad for the night feels that it cannot do without him, and yet the committee prefer a better home for him. And so hours of discussion and selection pass. Those who are able, pay the fares of the children, or otherwise make some gift to the Society, until at length the business of charity is finished, and a little band of young wayfarers and homeless rovers in the world find themselves in comfortable and kind homes, with all the boundless advantages and opportunities of the Western farmer's life about them . . . [pp. 231-33].

We have now in various portions of our country *between twenty and twenty-four thousand* who have been placed in homes or provided with work. . . .

The boys and girls who were sent out when under fourteen are often heard from, and succeed remarkably well. In hundreds of instances, they cannot be distinguished from the young men and women natives in the villages. Large numbers have farms of their own and are prospering reasonably well in the world . . . [p. 241].

The immense, practically unlimited demand by Western communities for the services of these children shows that the first-comers have at least done moderately well, especially as every case of crime is bruited over a wide country-side, and stamps the whole company sent with disgrace. These cases we always hear of . . . [p. 242].

OUR FIRST EMIGRANT PARTY (FROM OUR JOURNAL)

BY A VISITOR

On Wednesday evening, with emigrant* tickets to Detroit, we started on the *Isaac Newton* for Albany. Nine of our company, who missed the boat, were sent up by the morning cars, and joined us in Albany, making forty-six boys and girls from New York, bound westward, and, to them, homeward. They were between the ages of seven and fifteen—most of them from ten to twelve. The majority of them orphans, dressed in uniform—as bright, sharp, bold, racy a crowd of little fellows as can be grown nowhere out of the streets of New York. The other ten were from New York at large—no number or street in particular. Two of these had slept in nearly all the station-houses in the city . . . [p. 246].

As we steamed off from the wharf, the boys gave three cheers for New York, and three more for "Michigan." All seemed as careless at leaving home forever, as if they were on a target excursion to Hoboken . . . [p. 247].

At Albany we found the emigrant train did not go out till noon, and it became a question what to do with the children for the intervening six hours. There was danger that Albany street-boys might entice them off, or that some might be tired of the journey, and hide away, in order to return. When they were gathered on the wharf, we told them that *we* were going to Michigan, and if any of them would like to go along, they must be on hand for the cars. This was enough. They hardly ventured out of sight. The Albany boys tried hard to coax some of them away; but ours turned the tables upon them, told them of Michigan, and when we were about ready to start, several of them came up bringing a stranger with them. There was no mistaking the long, thick, matted hair, unwashed face, the badger coat, and double pants flowing in the wind—a regular "snoozer."

"Here's a boy what wants to go to Michigan, sir; can't you take him with us?"

"But, do you know him? Can you recommend him as a suitable boy to belong to our company!" No; they didn't know his name even. "Only he's as hard-up as any of us. He's no father or mother, and nobody to live with, and he sleeps out o' nights." The boy pleads for himself. He would like to go and be a farmer—and to live in the country—will go anywhere I send him - and do well if he can have the chance.

Our number is full—purse scant—it may be difficult to find him a home. But there is no resisting the appeal of the boys, and the importunate face of the young vagrant. Perhaps he will do well; at any rate, we must try him. If left to float here a few months longer, his end is certain. "Do you think I can go, sir?" "Yes, John, if you will have your face washed and hair combed within half an hour." Under a brisk scrubbing, his face lights up several shades; but

* Since this first experience, we have always sent our children by regular trains, in decent style.

the twisted, tangled hair, matted for years, will not yield to any amount of washing and pulling—barbers' shears are the only remedy.

So a new volunteer is added to our regiment . . . [pp. 247-48].

The conductor, a red-faced, middle-aged man, promises to give us a separate car; but, while he whispers and negotiates with two Dutch girls, who are traveling without a protector, the motley mass rush into the cars, and we are finally pushed into one already full—some standing, a part sitting in laps, and some on the floor under the benches—crowded to suffocation, in a freight-car without windows—rough benches for seats, and no back—no ventilation except through the sliding-doors, where the little chaps are in constant danger of falling through. There were scenes that afternoon and night which it would not do to reveal. . . .

Night came on, and we were told that "passengers furnish their own lights!" For this we were unprepared, and so we tried to endure darkness, which never before seemed half so thick as in that stifed car, though it was relieved here and there for a few minutes by a lighted pipe . . . [p. 249].

We were in Buffalo nine hours, and the boys had the liberty of the town, but were all on board the boat in season. We went down to our place, the steerage cabin, and no one but an emigrant on a lake-boat can understand the night we spent. The berths are covered with a coarse mattress, used by a thousand different passengers, and never changed till they are filled with stench or vermin. The emigrants spend the night in washing, smoking, drinking, singing, sleep, and licentiousness. It was the last night in the freight-car repeated, with the addition of a touch of sea-sickness, and of the stamping, neighing, and bleating of a hundred horses and sheep over our heads, and the effluvia of their filth pouring through the open gangway. But we survived the night; *how* had better not be detailed. In the morning we got outside upon the boxes, and enjoyed the beautiful day. The boys were in good spirits, sung songs, told New York yarns, and made friends generally among the passengers . . . [pp. 250-51].

Landed in Detroit at ten o'clock, Saturday night, and took a first-class passenger-car on Mich. C. R. R., and reached D.....c, a "smart little town," in S. W. Michigan, three o'clock Sunday morning. The depot-master, who seldom receives more than three passengers from a train, was utterly confounded at the crowd of little ones poured out upon the platform, and at first refused to let us stay till morning; but, after a deal of explanation, he consented, with apparent misgiving, and the boys spread themselves on the floor to sleep. At day-break they began to inquire, "Where be we?" and, finding that they were really in Michigan, scattered in all directions, each one for himself, and in less than five minutes there was not a boy in sight of the depot. When I had negotiated for our stay at the American House (!) and had breakfast nearly ready, they began to straggle back from every quarter, each boy loaded down—caps, shoes, coat-sleeves, and shirts full of every green thing they could lay hands upon—apples, ears of corn, peaches, pieces of pumpkins, etc. . . . [p. 251].

The children had clean and happy faces, but no change of clothes, and those

they wore were badly soiled and torn by the emigrant passage. You can imagine the appearance of our "ragged regiment," as we filed into the Presbyterian church (which, by the way, was a school-house), and appropriated our full share of the seats. The "natives" could not be satisfied with staring, as they came to the door and filled up the vacant part of the house. The pastor was late, and we "occupied the time" in singing. Those sweet Sabbath School songs never sounded so sweetly before. Their favorite hymn was, "Come, ye sinners, poor and needy," and they rolled it out with a relish. It was a touching sight, and pocket-handkerchiefs were used quite freely among the audience . . . [p. 252].

Monday morning the boys held themselves in readiness to receive applications from the farmers. They would watch at all directions, scanning closely every wagon that came in sight, and deciding from the appearance of the driver and the horses, more often from the latter, whether they "would go in for *that* farmer."

There seems to be a general dearth of boys, and still greater of girls, in all this section, and before night I had applications for fifteen of my children, the applicants bringing recommendations from their pastor and the justice of peace.

There was a rivalry among the boys to see which first could get a home in the country, and before Saturday they were all gone. Rev. Mr. O. took several home with him; and nine of the smallest I accompanied to Chicago, and sent to Mr. Townsend, Iowa City. Nearly all the others found homes in Cass County, and I had a dozen applications for more. A few of the boys are bound to trades, but the most insisted upon being farmers, and learning to drive horses. They are to receive a good common-school education, and one hundred dollars when twenty-one . . . [p. 253].

On the whole, the first experiment of sending children West is a very happy one, and I am sure there are places enough with good families in Michigan, Illinois, Iowa, and Wisconsin, to give every poor boy and girl in New York a permanent home. The only difficulty is to bring the children *to* the homes. E. P. SMITH [p. 254].

2. Placement without Adequate Investigation and Supervision in the Twentieth Century

DEPENDENT AND DELINQUENT CHILDREN IN NORTH AND SOUTH DAKOTA
(U.S. CHILDREN'S BUREAU PUBLICATION No. 160
WASHINGTON, D.C., 1926)

PLACEMENT OF EASTERN CHILDREN IN NORTH DAKOTA

In three of the North Dakota counties children were found to have been brought in for placement in free homes for adoption by New York organizations caring for children. The information was obtained from press items advertising the arrival of the children and

reporting the placements in the county, from court records of adoption, and from social workers and other persons having direct knowledge of the procedure. Complete data were not obtainable.

In one county it was stated that an agent of one of the New York societies came nearly every year to the county seat, seeking homes in which to place the children. In the early summer of 1919 and of 1921 the agent had visited the county and placed 4 children (2 boys of 4 and 6 years, and 2 girls of 2½ and 3 years), who were legally adopted. It was said that the agent had investigated the homes and placed the children on trial, stating that she would remove a child from any foster home which did not prove satisfactory. Applications for children of special types were also filed with the agent, the children being brought later to the applicant. The families who had in the past adopted children had been well to do.

The same agency brought 4 children to another county in December, 1921. The only information obtained regarding these children was from a woman who had traveled on the train which brought the children and the representative of the agency in charge of them. It was reported that 5 more children had been taken off the train at another city, and that altogether 26 children had been brought to North Dakota at this time and placed in different parts of the State. No clue to the whereabouts of these children could be obtained.

Children placed in X County were from another New York organization. Thirteen children (8 boys, 5 girls) from 1 to 12 years of age were brought to Y in April, 1914, and one was sent by request at a later date. The news items advising the public of the "distribution" of the children in this county were very illuminating. In the fall of 1913 a daily paper of Y reported with large headlines that arrangements were being made by a New York child-placing organization for the arrival in that city of "about a dozen young orphaned children." The "distribution" was to be made at the opera house some three weeks later. Prospective parents were assured that "no expense was attached to the delivery of the child." There was a difference of opinion between the court officials and the society as to the interpretation of the law regarding bond, and the plan fell through, the children being taken instead to Iowa. Wide newspaper

publicity was given to this society's second importation the following spring.

Newspaper accounts read by the agents of the Children's Bureau were as follows:

[April 7, 1914]

DISTRIBUTION OF ORPHAN CHILDREN

Miss of New York City was in Y yesterday and made arrangements for distribution of orphan children at this point. Miss was here last fall and partly arranged to have the distribution made in November, but owing to unforeseen reasons arising at the time the distribution did not occur as intended. All the necessary details have now been arranged with the State and county officials, and the distribution of about a dozen children ranging in age from 2 to 14 years, both boys and girls, will be made at the Opera House, beginning at 2 o'clock on April 24. For particulars apply to any member of the local committee who have consented to assist the agent in the distribution. The committee consists of the following residents of Y: (Seven members are named.)

For further information see small bills. The children came from orphanages of New York City and State.

[April 13, 1914]

HOMELESS CHILDREN COMING FRIDAY

Thirteen homeless children will be brought to Y by New York society

Friday afternoon at 2 o'clock at the Opera House there will be a public meeting, at which will be present 13 children brought from New York for adoption by Y or North Dakota residents. The children range from a baby 1 year old to a little girl 12 years of age. They are in charge of Miss of the Society, New York. Last fall, the society through Miss placed between 1,300 and 1,400 homeless children.

The party left New York for Y Tuesday. The following are the children to be brought here: (The names and ages of the children were given, including two sisters of 6 and 11 years, a brother and sister of 8 and 12 years, 2 brothers of 7 and 10 years, a brother and sister of 3 and 5 years, a brother and sister of 1 and 4 years, and two boys each of 6 years.)

[April 17, 1914]

HOMELESS CHILDREN

Distribution at Y Opera House, Friday, April 24

Next Friday, April 24, about a dozen homeless children from the East will arrive in Y and will be distributed to persons who may desire to adopt such children into their homes. The distribution will be made at the Opera House at

2 o'clock P.M. Information regarding this matter has been heretofore printed and announced in posters and by other advertising. A committee of citizens will supervise the distribution, to which committee applications must be made. These children are of various ages, of both sexes. The agents in charge of the distribution are authorized to give the necessary legal possession of the children and will furnish all proper information to those who may adopt any child.

[April 24, 1914]

ORPHAN CHILDREN ARRIVE FROM NEW YORK

Fourteen little ones brought here for distribution

According to announcement made heretofore a number of small children, in age from 1 to 13 years, arrived to-day from New York in charge of agents, ———. The children were taken to the G Hotel, where they remained during the morning, and at 2 o'clock were at the Opera House, where a large number of people assembled to witness the distribution of the children and get further information in regard to them.

Rev. was present and offered the benediction, and Miss spoke at some length, giving a sketch of the society's work and the manner of teaching, training, and caring for the children left in its charge.

There were 6 boys and 8 girls, and it was stated that the older boys had been taught at a farm school and were somewhat familiar with farm life. Of the 1,400 children placed in homes by the speaker, 88 per cent had turned out satisfactory to those who had taken them, and only 2 per cent of that number had died.

All applications for children were submitted to a committee of Y citizens, including the two ladies in charge.

The children were well-dressed and well-behaved youngsters, and being orphans, naturally excited considerable sympathy from many who were present. A complete record, as far as known, of the birth, parentage, and other circumstances regarding each child was given to the successful applicant . . . [pp. 72-73].

It was reported that annual supervision was given by the agents of the society for the first five years, but it was not known whether this was by representatives of the society sent out from New York. A former juvenile commissioner of the county for a time made reports on blank forms supplied by the society concerning the school grade attained by the children, their attendance at church and Sunday school, their physical appearance, and whether they fitted into the home or would have to be replaced.

Many of the children did not prove to have been satisfactorily placed. Some examples were cited:

Two of the girls were placed with an elderly couple, who found the girls difficult to manage and very "untruthful." They were replaced many times, and the last known of either of them was that one was in a distant town in North Dakota. Another child had to be replaced because the foster parents proved to be "foul-mouthed," and had a very bad influence on the child.

Two little girls of 3 and 5 years, were taken into the home of one of the leading citizens of the city. They were supposed to be sisters, but the foster parents became convinced that they had at least different fathers. Since the children continually talked about "little Lucy," another sister, the foster parents decided to send to the New York society for this child and take her into their home, in order that the three sisters might be brought up together. The foster father arranged with the society to meet the child in Chicago, to which city its agent was also to bring a small boy for placement in the home of a friend of the foster father's family. The boy was ill with diphtheria when he arrived at that city, and the foster father caught it from him.

It soon developed, however, that not only was Lucy mentally deficient but also one of the other little girls. The foster parents found that they were unable to train these two children at all, although they made every effort to do so. These children therefore were returned to the New York society and at the time of inquiry were in a colony for the feeble-minded. The other child proved to be very bright and in 1922, at 10 years of age, was in the sixth grade in school; but the foster parents had postponed adopting her because of their unpleasant experience with her two sisters, although they fully expected to do so finally.

At the time of the study little information seemed to be available as to the ultimate fate of these children. Only three of them were still in Y in 1922. Although a careful search of the court records of adoption was made by an agent of the Children's Bureau the only records found were for two children both of whom were adopted in 1919, five years after the placement. The opinion was expressed by one informant that, aside from two or three, the children were "undesirables, whom the society wished to be rid of and thought they could give to the people out West who would not know any better." One foster father said he did not feel that careful consideration was given to the child's history before making a placement. He expressed his own feeling, as well as that of a number of others who were cognizant of the facts of this "importation," when he said that, if he could prevent it, there would never be another group of children placed in the city under the same methods and circumstances as these children had been placed.

DISTRIBUTION OF EASTERN CHILDREN IN SOUTH DAKOTA

A similar distribution was known to have occurred in South Dakota in March, 1914, when a child-caring agency from the East brought a number of children to W for placement.¹ The day of arrival was announced through the local papers a week in advance, and the public was told that "two dozen homeless waifs," ranging in age from 4 to 14 years, would be given away at the City Hall to "people wanting children, upon the recommendation of a committee of representative citizens."

The arrangements of the society for the disposal of the children were made by its agent, who came to W in advance. It was the intention of the agent and the committee to dispose of all the children on one day.

At the appointed time several hundred people gathered in the City Hall and looked over the 12 children, who were given seats on the platform where they could be inspected easily. A few questions were asked of the applicants for children as to their ability to support them and their intention to treat them as members of their families.

Nine of the children were actually placed in homes on the day of the meeting. Two others were placed a few days afterwards. One, a boy of high-school age, had not been given a home a week later, and it was not reported what became of him. Another New York child, not spoken of in the papers, was placed in a W home about that time. This boy caused considerable trouble, was shifted from one home to another, and was finally returned to New York. He had recently been seen again in South Dakota, having attained his majority.

In connection with the survey of placed-out children an effort was made to locate these New York children and to discover if possible how satisfactory the placements had been.

Three boys were known to have been legally adopted—one of them within the year of placement, and the others 4 and 5 years later. Consent to adoption had been given in the case of one girl, but no record of its completion was found, probably because the

¹ At this time there was no law in South Dakota regarding the bringing in of children from other States.

family had removed to another county. This girl was said to have been placed in a "good home." Three children were placed with people in other counties, one with a widow, "pretty old to take so young a child." One girl of 12 was returned, supposedly, to the New York society, although very vague information was secured in this instance. No trace whatever was found of the three other children, who, according to the news articles at the time were placed with families in the county outside W.

Considerable comment was aroused at the time, and there were press items in the newspapers of various cities in the eastern part of the State. The only city mentioned in connection with the affair was W, although it was vaguely rumored that the society had placed some children in other cities of the State.

The accompanying articles from the daily papers of W, S, and C, throw interesting sidelights on the method of placement.

[March 2, 1914]

TO FIND HOMES FOR CHILDREN

New York organization to place homeless youngsters with W families

Two dozen homeless waifs from the City of New York, ranging in age from 4 to 14 years, will be given to W people on Friday of next week. That is, they will be given to people wanting children upon the recommendation of a committee of representative citizens.

Arrangements for the disposal of the children had been made by Miss, agent of the Society of New York, who was in W on Saturday. The children are well disciplined, having come from various orphanages.

Aside from the necessary recommendations from the committee, which is composed of seven citizens, the foster parents must agree to treat the children in every way as members of the family, sending them to school, church, Sabbath school, and properly caring for them until they are 18 years of age. Protestant children will be placed in Protestant homes and Catholic children in Catholic homes.

The society which is bringing the children to the city is one of the largest organizations of the kind in the world. It is given financial support by a number of wealthy men in the East, and no collections are taken or support solicited in any way. Last year the funds handled by the society aggregated over \$750,000. During this period, 10,992 children were taught and partly fed and clothed, 6,356 boys and girls were sheltered in lodging houses, and 2,446 were provided with employment. There were 539 homeless children provided with

homes, many of them to be legally adopted. The society also maintains numerous homes, shelters, and schools for its dependents.

The children will be at the City Hall on Friday afternoon, March 13, at 2 o'clock. Addresses will be given at that time by Miss, visiting and placing agent, and, of New York City. . . .

[March 14, 1914]

NINE CHILDREN FIND NEW HOMES

Girls are favorites of foster parents, according to yesterday's distribution

Five hundred interested persons had their eyes fixed on the rostrum at the City Hall Auditorium yesterday afternoon, when nine children brought out from New York City by the were given into the care of their foster parents, who were only too eager to claim them.

No show troupe ever had more attention than did the dozen somewhat frightened "kiddies" who sat in a row on the stage. In the eyes of many women was the glisten of tears; somehow it seemed to them, unused to such scenes, almost like an auction block.

If the grown-ups who looked over the children thought it was a prize drawing, and some apparently had that idea, they soon had positive information from Miss and Miss, the guardian angels of the homeless tots from the East.

"I want that boy," declared one blustering assertive man.

"Do you own your home?" came the question from Miss

"Yes, and it's one of the best in the country, with furnace, hardwood floors, bath, and—"

"Never mind about that," broke in Miss "What church do you go to?"

And thus it went on, every applicant for children, and one little fair-haired maiden had twenty-five prospective parents wanting her, went through the "third degree" in the Council Chamber, while the two agents and the members of the local committee quizzed and questioned them over their ability to care for a child and give it the start in life that it had been thus far denied.

Somehow, a sort of hysteria pervaded the feminine part of the audience. In groups the women talked over the event, and many women, with more children than they could give proper care, impetuously asked for one of the little strangers. So frequent were the refusals, that many realized that instead of conferring a favor, a favor was granted to those who were so fortunate as to receive a child.

There were three brothers on the stage, with the homely cognomen of, that were attracting much attention. The older, a freckle-face, red-haired urchin of 11 years, seemed to be unaware that his younger brothers would soon be separated from him. Two little girls, one four and the other two, with golden tresses, and smiles as radiant as their hair, were a portion of another small family that was separated.

The children were given out as the foster parents of each had been examined by the committee and approved. A boy aged 6 and his two sisters aged 4 and 2 were placed in three families living in different towns; two brothers of 11 and 7 were placed in families living in different towns, while a third brother, 5 years of age, was a few days later placed in a third home. A 9-year-old boy, another whose age was not given, and two girls of 12 and 2½ years, were also placed in different homes.

Three of the children, boys, were not placed. One, who is 13 years old, is ready to enter the high school, and the agents are desirous of placing him in a home where he may receive an ample education. His mental gifts are extraordinary, and it is hoped to find a home where he may receive advantages., aged 6, and, aged 5, were not placed yesterday.

Miss and Miss will probably be in W for a week. They will visit the homes in which the children have been placed and possibly find places for the three boys who were left . . . [pp. 75-78].

STATE CONTROL OF INTERSTATE PLACEMENT

3. The Kansas Statute of 1901

KANSAS LAWS, 1901, CHAP. 106, "TO PROVIDE FOR DEPENDENT CHILDREN"

SECTION 15. *Foreign corporations*.—No association which is incorporated under the laws of any other state than the state of Kansas shall place any child in any family home within the boundaries of the state of Kansas, either with or without indenture or for adoption, unless the said association shall have furnished the state board of charities with such guaranty as they may require that no child will be brought into the state of Kansas by such society or its agents having any contagious or incurable disease, or having any deformity, or being of feeble mind or of vicious character, and that said association will receive and remove from the state any child brought into the state of Kansas by its agent which shall become a public charge within the period of five years after being brought into the state. Any person who shall receive to be placed in a home, or shall place in a home, any child in behalf of any association incorporated in any other state than the state of Kansas which shall not have complied with the requirements of this act shall be imprisoned in the county jail not more than thirty days, or fined not less than five dollars or more than one hundred dollars, or both, in the discretion of the court.

4. The New York Law of 1930

CAHILL'S CONSOLIDATED LAWS OF NEW YORK, 1930, CHAP. 56, "STATE CHARITIES LAW"

SECTION 306. *Children imported from other states; bond required.*—

It shall be unlawful for any person, agency, association, corporation, society, institution or other organization, except an authorized agency, to bring, send or cause to be brought or sent into the state of New York any child for the purpose of placing or boarding such child or procuring the placing of such child, by adoption, guardianship, or otherwise, in a family, a home or institution, except with an authorized agency, in this state, without first obtaining a license from the board. Application for a license shall be submitted on a form approved and provided by such board and be accompanied by proof that the applicant holds a license, or is approved by the state board of charities or similar body in the state where the applicant resides, or where its chief office is located, or where it has its place of business. Before bringing, sending, or causing to be brought or sent into this state any child, the person, agency, association, corporation, society, institution, or other organization, duly licensed as provided in this section must furnish to the board a blanket indemnity bond of a reputable surety company in favor of the state of New York in the penal sum of not less than one thousand dollars. Such bond must be approved as to form and sufficiency by the board and conditioned as follows: That such licensee (1) will report to the board immediately the name of each such child, its age, the name of the state, and city, town, borough, or village, or the name of the country from which such child came, the religious faith of the parents of the child, the full name and last residence of its parent or parents, the name of the custodian from whom it is taken, and the name and residence of the person or authorized agency with whom it is placed or boarded, released or surrendered, or to whom adoption or guardianship is granted, and the death of such child or any reboarding, replacement or other disposition; (2) will remove from the state within thirty days after written notice is given any such child becoming a public charge during his minority; (3) will remove from the state immediately upon its release any such child who within three years from the time of its arrival within the state

is committed to an institution or prison as a result of conviction for juvenile delinquency or crime; (4) will place or cause to be placed or board or cause to be boarded such child under agreement which will secure to such child a proper home, and will make the person so receiving such child responsible for its proper care, education and training; (5) will comply with the provisions of section three hundred and two of this article; (6) will supervise the care and training of such child, and cause it to be visited at least annually by a responsible agent of the licensee; and (7) will make to the board such reports as the board from time to time may require. In the event of the failure of such licensee to comply with the second and third conditions of the bond hereinbefore mentioned, and to remove, after thirty days' notice so to do, a child becoming a public charge, such portion of the bond shall be forfeited to the state or the county or municipality thereof as shall equal the sum which shall have been expended by the state or such county or municipality thereof for the care or maintenance or in the prosecution of such child or for its return to the licensee. (Added by L.1930, ch. 590, April 18.)

5. Interpretation of the New York Law by the Attorney General

JOHN J. BENNETT, JR., ATTORNEY GENERAL, TO JAMES H. FOSTER, ASSISTANT COMMISSIONER, NEW YORK DEPARTMENT OF SOCIAL WELFARE, AUGUST 13, 1936

I acknowledge receipt of your letter of August 4, 1936, in which you submit the following question as put to you by Attorney Gallert of the Free Synagogue Child Adoption Committee of New York: "Does Section 306 of the State Charities Law apply when a resident of New York himself goes to Toronto and there receives a child which he transports to New York for the purpose of himself adopting the child?"

In your inquiry you partly quote Section 306 of the State Charities Law, the pertinent part of which is: "It shall be unlawful for any person . . . to bring . . . into the State of New York any child for the purpose of placing . . . such child, by adoption, . . . in a family . . . in this state without first obtaining a license from the Board."

I agree with the conclusion stated in your letter that a careful reading of Section 306 as quoted in part above, does not prohibit any one procuring a child from outside the State and bringing the child into the State to be adopted by himself. A person bringing a child into the State to be adopted by himself is not bringing the child in "for the purpose of placing such child."

**6. Recent Interpretation by the Attorney General
of the Indiana Law of 1899**

LETTER FROM PHILIP LUTZ, JR., ATTORNEY GENERAL, TO WAYNE COY
DIRECTOR, INDIANA DEPARTMENT OF PUBLIC WELFARE
DECEMBER 10, 1934¹

I have at hand your inquiry of November 15, 1934, reading as follows:

In this letter we wish to call your attention to the Act of 1899, page 41, known as the "Importation of Dependent Children." Several questions have recently arisen as to the proper intentions of parts of this law and we will be pleased to have your interpretations on the following points:

1. Must the bond be given by the individual or agency responsible for the child or acting in the child's behalf? or

May the bond be given by an Indiana resident who wishes to take the child? or

May an Indiana resident or organization give the bond for an Indiana resident?

2. If an individual or agency is willing to meet the bond requirements, does Indiana have to accept application?

3. Should the bond be continued until all children reach the age of twenty-one? or

Will the bond, although cancelled, cover these cases?

4. Which state's definition of a dependent child should be considered?

5. Should an outside child be considered dependent only from a legal standpoint?

6. Should Indiana permit a child to be released, thus relieving responsibility for return?

7. Does adoption end the individual functioning of the bond?

8. Section 1 "or procuring the placing of such child in any home in Indiana by indenture, adoption or otherwise," etc. What is the significance of the word "adoption" as to before or after placement?

9. Indiana residents often adopt children in the state where the latter belong. Does such action infringe on the law? If so, what recourse may be taken?

¹ *Opinions of the Attorney General of Indiana for the Period from January 1, 1934, to January 1, 1935*, p. 486.

The Act referred to is found in Sections 4301 to 4305, inclusive, *Burns Annotated Indiana Statutes, Revision of 1926*.

Section 4301, *supra*, provides in part as follows:

It shall be unlawful for any person, corporation, association or institution to bring or send or cause to be brought or sent into the State of Indiana any dependent child for the purpose of placing such child in any home in Indiana, or procuring the placing of such child in any home in Indiana by indenture, adoption or otherwise, or to abandon such child after being brought or sent into the State of Indiana, without first obtaining the consent of the board of state charities, etc.

Section 4302, *supra*, reads as follows:

Such person, corporation, association or institution before bringing or sending, or causing to be brought or sent, any such child into this state shall first give an indemnity bond in favor of the State of Indiana in the penal sum of \$10,000, to be approved by said board of state charities, conditioned as follows: That they will not send or bring, or cause to be brought or sent, into this state any child that is incorrigible, or one that is of unsound mind and body; that they will, at once, upon the placement of such child, report to the board of state charities its name and age and the name and residence of the person with whom it is placed; that if any such child shall, before it reaches the age of twenty-one years, become a public charge, they will, within thirty days after written notice shall have been given them of such fact by the board of state charities, remove such child from the state; and if any such dependent child shall be convicted of crime or misdemeanor and imprisoned within three years from the time of its arrival within the state, such person, corporation, association or institution will remove from the state such child immediately upon its being released from such imprisonment, and, upon failure, after thirty days' notice and demand to remove as aforesaid any such child who shall have either become a public charge as aforesaid or who shall have been convicted as aforementioned, in either event, such person, corporation, association or institution shall at once and thereby forfeit the sum of \$1,000 as a penalty therefor, to be recovered upon such bond by a suit in the name of the State of Indiana; that they will place, or cause to be placed, each of such dependent children under written contract, which will secure to such child a proper home, and will make the person so receiving such child responsible for its proper care, education and training; that they will properly supervise the care and training of each of such children, and that each of such children shall be visited at least once a year by a responsible agent of the person, corporation, association or institution so placing, or causing to be placed, such child as herein provided; that they will make to the said board of state charities such reports of their work as said board from time to time may require.

Under Section 4302, *supra*, it seems to be beyond dispute that the bond must be given by the individual or agency responsible for the bringing or sending of such child into this state for the purpose of placing it in some home within the state and not by or on behalf of the Indiana resident in whose home the child is to be placed. That seems clearly to be the intent and meaning of the language: "*Such person, corporation, association or institution . . . shall first give an indemnity bond in favor of the State of Indiana. . . .*" (Our italics.) Furthermore, the conditions of the bond, as set out in detail in said Section 4302, clearly are not applicable to the person in whose home the child may be placed, but indicate conclusively that the principal obligor on such bond is to be the individual or agency responsible for the importation of the child.

By the word "application" as referred to in your second question, I am assuming that you have in mind the application for the "written consent" of the board of state charities for the importation of such a dependent child, as required by Section 4301, *supra*. Obviously the legislature intended to vest a certain measure of discretion in the board with respect to the giving or withholding of its consent to such importation, else otherwise there would have been no purpose in inserting the provision requiring such consent. In my opinion the board may refuse its consent for good and sufficient cause, such as the known incorrigibility or mental or physical unsoundness of any particular child proposed to be imported, reasonable grounds for anticipating the child's becoming a public charge, or refusal of such individual or agency to comply or agree to comply with proper rules and regulations duly adopted by the board under the authority of sections 1 and 3 of the act.

The liability of both the principal and the surety on a bond is contractual, and depends upon the terms of the contract. In the absence of a limitation in the contract as to duration of liability, and in the absence of cancellation authorized by the terms of the bond, liability of a bond executed in conformity with the provisions of Section 4302, *supra*, would continue until *all* dependent children imported by the principal obligor had attained the age of twenty-one years. And even in the case of a bond limited for a specified term, or subsequently cancelled under authority of the provisions

of such bond, in my opinion liability on the bond would continue, *as to dependent children imported by the principal obligor during the period the bond was in force*, until all of such children had attained the age of twenty-one years. I trust that this answers satisfactorily your third question.

In answer to your fourth question, the meaning of the word "dependent" child would be determined by the intent of the act itself, as construed in the light of the laws and decisions of this state.

Your seventh question is answered in the negative.

In answer to your ninth question, there is nothing in the act under consideration, or in any other laws of this state, to prohibit Indiana residents from adopting children under the laws of other states in which such children may be resident at the time of adoption. Furthermore, an adoption legally consummated in another state is given the same force and effect and confers upon such child the same legal rights and rights of inheritance as an adoption in this state, provided the record of such adoption is filed with the Clerk of the Circuit Court of some county in this state, and the same entered upon the order-book of said court in open session. (See Section 925, *Burns Annotated Indiana Statutes, Revision of 1926*.)

I regret that I do not understand fully the precise questions presented under items 5, 6, and 8 of your inquiry, and must respectfully request that you detail more specifically the subject-matter of such questions.

December 10, 1934.

7. Deportation of Children from England to Canada

SOME ANGLES OF DISCUSSION IN THE JUVENILE IMMIGRATION PROBLEM OF CANADA, 1924 (CANADIAN COUNCIL ON CHILD WELFARE, PUB. NO. 14; OTTAWA, 1924)

Juvenile immigration as far as Canada is concerned is largely though not entirely a question of the emigration of juvenile immigrants from Great Britain and Ireland to this Dominion, and is similar in nature, if not in degree, to the movement of dependent juveniles in the last century from the congested areas of the Eastern United States to the agricultural settlements in the New West. . . .

There seems small room for doubt that the policy of juvenile emigration was originally embarked upon in England from the most sincere and generous-minded philanthropy, in the absolute conviction that emigration overseas offered the best possible chance in life to the under-privileged waifs and strays of the English poor-law schools and similar institutions . . . [p. 3].

Earl Grey stated that in his opinion no greater kindness could be shown the State children of England than to send them to Canada. Even Dickens, one of the most penetrating English social analysts of his day, saw in emigration the solution of social perplexities and complete reconstruction. Micawber and his unregarded family, Mrs. Gummidge and Martha, all effected a miraculous rehabilitation overseas. But some Britishers are not willing to ascribe the movement to such sincerely philanthropic convictions. Henry Cotton, writing in the *Manchester Guardian*, under date of April 11th, 1923, states:

Child immigration originated in the desire on the part of the Poor Law authorities in Great Britain to rid themselves of the responsibility of providing for the boys and girls in their charge, when they were prevented by law from working in the factories. Instead of adopting educational measures to meet the case, the authorities conceived the plan of shipping across the Atlantic as many boys and girls as they could persuade to go. . . .

But, dismissing the question of the motives behind this tide of juvenile emigration to Canada, the Canadian social worker is concerned with the situation presented in Canada by its presence. Begun in 1869,¹ "this work of the emigration of children has attained proportions and assumed an importance at the present time quite beyond the expectations of its early promoters." From 1868 to the end of the fiscal year 1922-23, Canada received no less than 77,638 juvenile immigrants: . . . (*Report of the Department of Immigration and Colonization for the Fiscal Year Ended March 31, 1923*) . . . [p. 4].

These dependent children are the wards of the nine below mentioned British Emigration agencies operating in Canada. These and other philanthropic organizations in England and Scotland, together

¹ Quoted p. 8, *Juvenile Immigration Report, Federal Department of Immigration, Canada, 1912-3*.

with the Ministry of Health, which links up the 600 Boards of Poor Law Guardians and the Certified Schools (Poor Law) of the Home Office are the recruiting forces gathering children to be sent to Canada under the Juvenile Emigration scheme. These children are generally speaking dependent institutional children though there is a minority, a small minority, of dependent children from poor homes, where the mother is willing to break the maternal tie in order to provide some of her children at least with what she is convinced is a better chance overseas than is available at home . . . [p. 5].

Apart from the fact that Britain, driven by the more acute post-war problems of child dependency, unemployment, and by the lack of space or money to provide homes and schools for adequate treatment of these social problems, seeks an outlet overseas, there is a demand for these little immigrants here, as witnessed by the receipt of 17,000 applications annually for the last three years for such children. Yet Canada has today in but six of the provinces (the figures could not be obtained for Nova Scotia, Prince Edward Island, and for New Brunswick outside of one centre) 21,557 wholly or partially dependent children in institutions, distributed as follows: British Columbia, 723; Alberta, 966; Saskatchewan, 353; Ontario, 2,533; Quebec, 15,667; and Manitoba, 1,315. . . .

Of course some of these children are not placeable, there being the usual residuum of mentally or physically handicapped children found in all social institutions. But the majority are, *providing homes acceptable to the provincial child-caring authorities are available and providing these authorities are active in their homefinding and placement activities . . .* [p. 8].

Adequate provision should be made for co-operation between the Juvenile Immigration Department of the Federal Government, and the Child-Caring Divisions of the respective provincial governments. To the latter are assigned by the British North America Act, the responsibilities of child care within the province. It is unjust and unfair to the provinces, and unmindful on the one hand of the interests of the public welfare and on the other of the welfare of these juvenile immigrants themselves, to place on those provinces the responsibility for the care of the neglected and dependent child, and to reserve to the federal government the right to flood the

provinces with juvenile dependents. Eight of the provinces have built up a body of children's protective legislation and the official staff necessary for its administration. Yet their whole supervision and inspection service must stand helplessly by, while a federal department authorizes overseas agencies to engage in the work of child placement within the provinces; to employ their own inspectors; and to report only to the federal department, which reports that it is exercising effective supervision over the emigration societies, and also inspecting *all* the children placed out under them. This, it is stated, is accomplished with a staff of 6 to 8 full-time inspectors visiting 3,613 children located in the provinces of Canada . . . [p. 9].

Are Canadian social workers not justified in their assumption that while the children's agencies are placing children in homes, the greater effect of the present juvenile immigration policy is to place these immigrant children primarily as workers on the Canadian farms? Taking any report of the Department at haphazard, this is the purpose running through the arguments for juvenile immigration. The 1912 Report for instance states, (page 8):

"From the point of view of Canadians the present system of juvenile immigration is full of splendid hopefulness. The services of the children are needed urgently, needed as farm and domestic labourers," and further:

"It has long been my conviction based upon years of personal observation—that a lad of 10 or 12 years of age is actually worth more to a farmer than the cost of his board, clothing and school attendance."

The Superintendent, speaking at the Child Welfare Conference in Winnipeg, Sept., 1923, stated frankly:

"The advantage to the employer is the work the child does, and as in the case of Canada where farm help is so scarce, every little work helps. . . . *Persons taking children as a rule do so for the work they can do.*"

But perhaps the most direct admission that employment is the "raison d'être" of the placement is the statement regarding the methods of placement by the society:

As children are first placed on approval, a foster parent or employer is not bound to keep a boy or girl in his employ that he finds incapable of performing the duties required of him. If an employer, therefore, finds his boy or girl too small for the work required or the boy is dissatisfied with the hours of work, his personal treatment, etc., the matter is brought to the attention of the Home by the Department, and if it is found in the interest of the child he is removed to a more desirable environment in order that he may be afforded the utmost possible justice, fair play and liberality. . . . The object of this branch of immigration is to supply our farmers and householders with boys for farm work and girls for domestic service.

But the special report of the Supervisor of Juvenile Immigration, 1923, following a visit to England is the document on which the social workers base their allegation that the present system is fraught with the dangers of child peonage, especially when it is frankly stated: . . . [p. 10].

The importation of thousands of boys and girls of ages varying from fourteen to eighteen years will in a large measure meet the needs of Canada in respect to farms and domestic labour. Thousands of bright, healthy, and worthy boys and girls in Great Britain are willing and ready to come to Canada and engage in this kind of employment, if assistance could be given them.

The annexed tabular statement does not show a very substantial increase in arrivals during the past twelve months over the previous fiscal year. While this was perhaps *disappointing to employers* and to those who endeavoured to supply this *needed help*, yet it is a source of satisfaction that the children received were of excellent types in point of health and physique and possessed a *good understanding of the purpose for which they had come to Canada and what would be expected of them*.

While the widespread demand for British child and juvenile immigrants is significant, the shortage of supply is not less so, for only 7 per cent of the children and juveniles required could be supplied. The vital thing is that we have been unable to get enough young people to meet the urgent requirements of our agriculturists and householders. . . .

The most suitable ages to send a child to Canada for service are from *five to fourteen years for boys*, and from thirteen to sixteen for girls. Children three-and-a-half to ten are emigrated only when foster homes have been previously selected for them in Canada (p. 68).

Can this country approve the immigration of boys from 5 to 14 years for service? . . . [pp. 10-11].

In the Superintendent's Report, 1923, page 62, covering the children inspected in the last fiscal year, 1,426 children are listed as

wage-earning and the total annual wage paid to above children \$173,190 or somewhat over \$100 per child per annum. Such cheap exploitation of boy workers undoubtedly tends to oust efficient farm workers. . . .

Under the Empire Settlement Scheme, the Canadian and the British Government each advance \$40 per child (a total of \$80) to any recognized society for the purpose of bringing to Canada children between 8 and 14 years of age. Child placement records show that these ages are above the most desirable ages for adoption and that these children are really being brought out as little "helpers," to quote the official phrase . . . [p. 12].

There are nine societies at present working under this agreement, namely: Orphans Homes of Scotland (Fairknowe Home), Brockville, Ont.; National Children's Home, Hamilton, Ont.; Marchmont Home, Belleville, Ont.; Dr. Barnardo's Home, Toronto, Ont.; The Middlemore Home, Fairview Station, Halifax, N.S.; The Catholic Emigration Association, Ottawa, Ont.; Fegan's Home, 295 George St., Toronto, Ont.; The Salvation Army Home, 341 University Street, Montreal, Que.; and the Church of England Society (The Gibbs Home), Sherbrooke, Que.

The system under which these societies work is simple, and to avoid any error or misrepresentation it might be best summarized in the words of the Supervisor of Juvenile Immigration himself:

A form is sent to each applicant which is filled up and returned to the Superintendent, in which the work required of the child is stated together with such other information as the society may require. A certificate as to the character of the applicant and members of his family is furnished by a responsible person, usually a magistrate or clergyman. This information must be in the possession of a superintendent of the institution before the child is entrusted to their care. A child is often sent out on trial, and if, within a reasonable time, it proves satisfactory, an indenture is entered into in legal form over the signatures of the home superintendent and the employer. The terms of the agreement necessarily vary according to the age and capacity of the child. It provides for an engagement covering a definite period, during the whole or part of which term the child is to be boarded and clothed and made to attend church and Sunday School. Provincial statutes control the matter of compulsory school attendance. . . . [pp. 12-13].

It is thus evident that there is no obligatory inspection, either by the Society or the Department, of the homes of the applicant before the child is placed therein. The Society is left free to select the home, to select the child, subject to a cursory approval in London, to bring the child to Canada, to place the child, *and to inspect the placement reporting on the suitability or otherwise of its own work, to the Federal Department only. It should be remembered that it is this same Department which has already granted it the privilege of working in Canada.* True, the child is visited and inspected after placement, by the representative of the Federal Department, but it may well be asked, whether this service has been adequate.

It is no exaggeration to say that the methods of inspection which appear to have been followed in this field are open to fairminded criticism. The Superintendent speaking at Winnipeg stated that his branch employed from 6 to 8 full-time inspectors and that "land agents and others" assisted. According to the Department of Immigration Report to March, 1922 (the figures are omitted for 1923), 1,211 children were brought to Canada in that year, 3,125 were listed as under Departmental supervision, a total of 4,336 children who might be assumed to have one visit made in the year. Yet the total number of visits made during the year including "recurrent visits considered advisable in children's interests" were only 2,243 (see page 59 of 1922 Report) . . . [p. 13].

SECTION III

ADOPTION

INTRODUCTION

Adoption by which the relationship of parent and child is created by law was unknown to the common law and was not authorized by statute in Great Britain until 1926. It was, however, an ancient custom under the civil law and in India and Japan. In Rome, where the religious headship of the family and the property passed from father to son, adoption was often necessary to secure an heir or to promote and continue the prestige of a family. It was used primarily not as a means of caring for dependent children but for providing an heir when a family was without one or providing one better qualified to carry on the family traditions than were the natural children. In the case of Marcus Aurelius, a son was adopted to inherit even the crown of the empire. The abstract rule under the civil law was that adoption should imitate nature, and in consequence an adopting parent had to be at least fifteen years older than the child adopted and could not be a relative within the prescribed limits of consanguinity.

Adoption was carefully considered in the preparation of the Napoleonic Code, and with modifications, the Roman law was followed. Other countries of Europe whose codes are based on the civil laws have, with statutory modifications and new safeguards, also followed the Roman law.

In the United States, outside the states where the civil law was introduced by the French and the Spanish, no provision for legal adoption was made until the middle of the nineteenth century. The first adoption statute was passed by Massachusetts in 1851¹ and with modifications became the model for laws in other states, for example, Kansas in 1861 and Illinois in 1867. The first Massachusetts law required a joint petition by the adopting parents to the

¹ "An Act To Provide for the Adoption of Children," *Acts and Resolves, January 1850, to May, 1851*, chap. 324, approved May 24, 1851.

probate judge and the written consent of the child's parents, if living, or of his guardian or next friend if the parents were deceased. The judge if satisfied that the adoption was "fit and proper" was to enter the adoption decree. From 1851 until 1923, when the legislature authorized the probate judge to appoint a guardian *ad litem* to investigate the facts in a case for him,¹ this Massachusetts law was unchanged except in minor details.

Many of the earlier state adoption laws were intended merely to provide evidence of the legal transfer of a child by the natural parents to the adopting parents, and provision for a public record of the transfer, similar to the registration of deeds, was all that was considered necessary. Laws of this sort providing for adoption by deed have only recently been repealed in Iowa, Texas (see p. 172), and Pennsylvania. It was only as evidence was accumulated that many parents and some agencies were willing to have children adopted by persons wholly unsuitable or even unscrupulous, that the movement to provide machinery for investigating all adoptions got under way.

Michigan, which enacted a law in 1891² requiring that the judge make an investigation before entering a decree of adoption, was one of the first to recognize the interest of the state in insuring successful adoption. As in other states, it was soon discovered that the judge was unable to make such an investigation, and the law was amended in 1923³ to require that the investigation be made by the county agent, who worked under the general supervision of the State Welfare Commission, or a local probation officer. A number of states, for example, Arizona⁴ and Pennsylvania,⁵ still merely authorize the judge to order a probation officer to determine the

¹ *Acts and Resolves of 1923*, chap. 432. The law was greatly amended in 1931 (*ibid.*, 1931, chap. 342) when Massachusetts judges were required to refer all petitions for adoption of children under fourteen years to the State Department of Public Welfare for investigation, unless the petition was presented or recommended by a charitable corporation organized under the laws of the state for the purpose of caring for children.

² *Public Acts, 1891*, No. 77.

³ *Ibid.*, 1923, No. 70.

⁴ *Revised Statutes, 1913* (Civil Code), sec. 1192.

⁵ *Laws of 1925*, Act 93, sec. 3.

facts and report to him, and in some jurisdictions he is given a choice of several agencies.¹

In the past fifteen years it has been widely accepted that before adoption is approved, the state should determine by social investigation that family ties are not being unnecessarily or ill-advisedly broken, that the adopting parents can be expected to meet adequately the new responsibilities they are assuming, and that the child is not feeble-minded or in other ways unsuitable for adoption. To thus safeguard adoption an investigation before placement and supervision during a trial period of six months or a year before the decree is made final is now recognized as necessary. By January 1, 1938, some twenty-four states had enacted legislation making it mandatory that the judge refer adoption cases either to a local agency or to the State Department of Public Welfare for investigation. Minnesota was the first state to pass a law of the latter type.² The Children's Bureau of the State Board of Control, which was responsible for the investigations under the law, used either social workers employed by the state or the agents of the county boards of child welfare working under state direction to assemble the facts. When experience showed that a report disapproving an adoption was rarely considered by the Court, the law was amended so as to give the Board of Control the right to move the dismissal of a petition to adopt a child when it found reasons for disapproving adoption.³

By January 1, 1938, laws providing that the judge must notify the appropriate state department when a petition for adoption is filed and a report of its investigation be submitted to the court in thirty or ninety days had been passed by nine states, Alabama (p. 180), Arkansas, California, Louisiana, Massachusetts, New Mexico, North Dakota, Oregon, and Rhode Island, in addition to Minnesota.⁴

¹ For example, the Wisconsin Act as amended in 1929 provides that the investigation may be made by the licensed child welfare agency or county home for dependent children which placed the child in the home of the petitioner, or by a probation officer or by some other suitable person designated by the court, or, if the court should so desire, by the State Board of Control.

² *Laws of 1917*, chap. 222, p. 335.

³ *Laws of 1927*, chap. 170, par. 1.

⁴ Sometimes, as in California, the law waives the investigation by the State Department if the petition is filed by a licensed or incorporated child-placing agency, or when

Vesting the responsibility in the State Department of Public Welfare is the best system from an administrative standpoint, as it insures a state-wide standard of investigation and supervision. Moreover, a state department is often more effective before the court than a county investigator, and centralization of responsibility provides a state-wide record of adoptions that can be effectively kept from scrutiny by the general public. Under such a system the state department may call on the county welfare departments to make investigations if they have an adequate staff and co-operate with the state in maintaining the standards set. As state-county relationships develop in welfare administration, this state-wide control of the standards of adoption should become the required method in a much larger number of states.

Other provisions of adoption laws that need to be considered in evaluating a state law are those with reference to consent by the natural parents and application by both foster parents, the property rights of the adopted child, and the revoking of adoption. In this connection it should be noted that interstate adoptions raise in a more serious form the problems of interstate placements, which have already been discussed.

The number of children available for adoption should have decreased greatly in the last twenty years. The practice of taking children from their parents solely on the ground of poverty is rapidly disappearing. Workmen's Compensation and Mothers' Aid laws, better wages, improved health conditions, and more adequate public relief have prevented the breakup of many families. The expansion and improvement of the work of children's agencies and family welfare societies have also been major causes of this change in policy. On the other hand, as a result of many causes the demand for children to adopt tends to increase.

The technique and standards developed by children's agencies in

the adoption is sought by a step-parent and one natural parent retains custody of the child. The Louisiana law makes reference to the State Department unnecessary if the child is in the custody and legal control of an institution approved by the State Department of Public Welfare (*Louisiana Laws of 1936*, Act 233, sec. 3), or if the court is personally acquainted with the child and the adopting parent. Rhode Island provides that either the Society for the Prevention of Cruelty to Children or the State Department must be asked to make the investigation (*Rhode Island Acts and Resolves, 1926*, chap. 852).

the placement of children in foster homes are, in general, those which the state now undertakes to enforce in adoptions. Accepting children for foster-home care often leads to a desire on the part of the parents to make the relationship an enduring and permanent one; and, as institutional placements have declined and foster-home care increased, it might be expected that child-placing agencies would all report an increasing number of adoptions. However, great reluctance on the part of children's agencies to effect a final separation when there is still a chance of the child's return to its natural parents has kept down the number of adoptions made through such agencies. A recent study by the Children's Bureau of two thousand adoptions in nine states in which investigations are made by a state department has not yet been published, but some of the major findings have been released. This study showed that of about one thousand two hundred children adopted by persons not their relatives, 60 per cent had been arranged by public or private children's agencies, 27 per cent by parents or relatives, and the remaining 13 per cent by other persons, many of them associated in some way with the mother's confinement.¹ While the best agencies observe the recognized safeguards in placement for adoption, there are still some few which are entirely uninhibited by concern for the rights of the natural parents or the theory that whenever possible it is in the interest of the child that he be kept with his own parents. It is therefore encouraging to find that the Children's Bureau investigation showed that "the State in which there was the largest number of disapprovals or questions as to the desirability of adoptions had a comparatively small proportion of placements by social agencies."² Unquestionably, in states in which the state departments are required by law to make investigations, the procedures of licensed agencies when not adequate could be promptly brought up to standard. However, the greatest service is rendered in the protection of children placed by individuals—sometimes entirely ignorant of the effects of careless placement on the future of the child

¹ Agnes K. Hanna, "Some Problems of Adoption," *The Child* (published by U.S. Children's Bureau), I (December, 1936), 5.

² *Ibid.*, p. 5.

and sometimes receiving money for a placement they know is against sound public policy.

It is therefore increasingly important that the state make sure that adoption is not consummated until the necessary investigations have been made. All the investigations of adoption made in this country and the recent Report of the Departmental Committee in Great Britain (p. 222) show that very frequently entirely unworthy parents are permitted to adopt children when a complete social investigation is not routinely required.

In states in which the court is required to report its action on adoption petitions to the State Department of Public Welfare, the number of adoptions is annually reported as well as certain social facts about the children. But in states in which this procedure is not required and the courts do not keep a separate record of adoptions, the number can be discovered only by a check of the court records. In connection with studies of adoptions, such checks have been made in a number of localities and like the reports of the state departments they show wide variation in the practice of adopting children between different states and also between different sections of the same state. For example, the commission appointed to study and revise the statutes of Pennsylvania relating to children found one adoption per 10,421 inhabitants in Philadelphia County, one for every 5,270 persons in Allegheny County (including Pittsburgh), and one for every 2,362 in Erie County (including Erie).¹

In Massachusetts the number of petitions filed has been increasing during the past five years, reaching 833 in 1936.² On the other hand, in Minnesota the number of children adopted during the 1934-36 biennium was 661, the lowest in the previous twelve years.³

Children born out of wedlock are adopted more frequently than any other group, but their proportion in the total number varies greatly in different cities. Local studies have shown approximately 35 per cent of the adoptions in Philadelphia County⁴ involved chil-

¹ *Report of the Commission to the General Assembly Meeting in 1925*, Part I, p. 140.

² *Annual Report of the Massachusetts Department of Public Welfare, 1936* (Public Doc. No. 17), p. 30.

³ *Eighteenth Biennial Report of the Minnesota State Board of Control*, p. 34.

⁴ *Report of the Commission to the General Assembly Meeting in 1925*, Part I, p. 72.

dren born out of wedlock; in Cook County, Illinois, 51 per cent;¹ and in two Massachusetts counties 61 per cent.² The recent study by the United States Children's Bureau previously referred to revealed that 60 per cent of 2,000 petitions filed were for the adoption of children born out of wedlock. It is interesting to find that 30 per cent of these children were adopted by relatives, and that in about half of these cases, a stepfather petitioned for the adoption.³

The fact that Great Britain provided for legal adoption after our long experience with adoption laws in the United States makes the discussion in Parliament (p. 204),⁴ the type of law adopted (p. 216), and the British experience under the law as revealed by the Report of the Departmental Committee in 1937 (p. 222) of special interest.

In European countries where the legislation is much older than in the United States adoptions were, nevertheless, very few until recent years. For example, in France from 1910 to 1913 the average number adopted per year was 129;⁵ from 1919 to 1922, 267.⁶ In 1923, when new legislation facilitating adoption became operative, the number was 613, and in 1924 it reached 1,700,⁷ and has since decreased so that the number recorded in 1931 was 1,365.⁸ In Berlin, a city of more than 4,000,000 people, the average number adopted for the four-year period 1923-26 was 179; in the year 1933, 465, and in 1934, 401⁹ were adopted. In Sweden, where adoption was not legalized until 1917, the average annual number of adoptions

¹ Elinor Nims, *The Illinois Adoption Law and Its Administration* (Chicago: University of Chicago Press, 1928), p. 27.

² Ida R. Parker, "Fit and Proper?" (Boston: Church Home Society, 1927), p. 17.

³ *The Child*, I (December, 1936), 4.

⁴ Interesting parts of the debate are conveniently found in S. P. Breckinridge, *The Family and the State: Select Documents* (Chicago: University of Chicago Press, 1934), pp. 378-94.

⁵ *Compte général de l'administration de la justice civile et commerciale de la France 1910-1913*.

⁶ *Ibid.*, 1919-1922.

⁷ Ministère de la Justice, "Rapport au Président de la République française sur l'administration de la justice civile et commerciale," 1922 1923, and 1924, *Journal officiel*, annexe 1926, 1927, and 1928.

⁸ *Compte général de l'administration de la justice civile et commerciale* (Paris [for the respective years]), pp. 38 and 42.

⁹ *Statistisches Jahrbuch der Stadt Berlin*, 1935, Table No. 292, p. 210.

from 1923 to 1926 was 941 and was slightly larger (1,086) in 1935.¹ Undoubtedly the fact that so many children were made orphans by the war is the explanation of the very large increase in the number of adoptions in England, France, and Germany.

Legal provision for adoption is now practically universal in Europe, Great Britain, the United States, and Canada, but not so universal in South and Central America. The modern motive is the conferring of the "privileges of parents upon the childless and the protection of parents upon the parentless."²

¹ *Statistisk Årsbok för Sverige*, 1925, pp. 220-21; 1928, p. 257; *Statistical Yearbook for Sweden*, 1937, p. 255.

² W. Clarke Hall and Justin Clarke Hall, *The Law of Adoption and Guardianship of Infants* (London: Butterworth & Co., 1928), p. 5.

GRACE ABBOTT

1. Adoption by Deed in Texas *

LAWS OF THE STATE OF TEXAS, 1850, CHAP. 39¹

SECTION 1. Be it enacted by the Legislature of the State of Texas, That any person wishing to adopt another as his or her legal heir, may do so by filing in the office of the Clerk of the County Court in which county he or she may reside, a statement in writing, by him or her signed and duly authenticated or acknowledged, as deeds are required to be, which statement shall recite in substance, that he or she adopts the person named therein as his or her legal heir, and the same shall be admitted to record in said office.

SEC. 2. Be it further enacted, That such statement in writing, signed and authenticated, or acknowledged and recorded as aforesaid, shall entitle the party so adopted to all the rights and privileges, both in law and equity, of a legal heir of the party so adopting him or her. Provided, however, that if the party adopting such person have, at the time of such adoption, or shall thereafter have a child or children, begotten in lawful wedlock, such adopted child or children shall in no case inherit more than the one-fourth of the estate of the party adopting him or her, which can be disposed of by will.

2. Adoption Legalized in New York in 1873

LAWS OF NEW YORK, 1873, CHAP. 830

SECTION 1. Adoption, as provided for in this act, is the legal act whereby an adult person takes a minor into the relation of child, and thereby acquires the rights and incurs the responsibilities of parent in respect to such minor.

SEC. 2. Any minor child may be adopted by any adult, in the cases and subject to the rules prescribed in this act.

SEC. 3. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; and a married

* Also found in Oliver C. Hartley, *A Digest of the Laws of Texas* (Philadelphia, 1850), pp. 88-89. This act was not repealed until 1931. See *Acts of 1931*, chap. 177, sec. 11.

woman, not lawfully separated from her husband, cannot adopt a child without the consent of her husband.

SEC. 4. The consent of a child, if over the age of twelve years, is necessary to its adoption.

SEC. 5. Except in the cases provided for in the next section, a legitimate child cannot be adopted without the consent of its parents, if living, or the survivor, if one is dead; nor an illegitimate child without the consent of its mother, if she is living.

SEC. 6. The consent provided for by the last section is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery or cruelty, and who is, for either cause, divorced; or is adjudged to be an insane person or an habitual drunkard, or is judicially deprived of the custody of the child on account of cruelty or neglect.

SEC. 7. When the child to be adopted has neither father nor mother living, or whose consent, if living, is made unnecessary by the provisions of the last section, such consent must be given by an adult person having the lawful custody of the child.

SEC. 8. The person adopting a child, and the child adopted, and the other persons whose consent is necessary, shall appear before the county judge of the county in which the person adopting resides, and the necessary consent shall thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated, in all respects, as his own lawful child should be treated.

SEC. 9. The judge shall examine all persons appearing before him pursuant to the last section, each separately, and, if satisfied that the moral and temporal interests of the child will be promoted by the adoption, he shall make an order in which shall be set forth, at length, the reasons for such order, directing that the child shall thenceforth be regarded and treated, in all respects, as the child of the person adopting.

SEC. 10. A child, when adopted, shall take the name of the person adopting, and the two thenceforth shall sustain toward each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation, excepting the right of inheritance, except that as respects the passing and limitations over

of real and personal property, under and by deeds, conveyances, wills, devises and trusts, said child adopted shall not be deemed to sustain the legal relation of child to the person so adopting.

SEC. 11. Whenever a parent has abandoned or shall abandon an infant child such parent shall be deemed to have forfeited all claim that he or she would otherwise have, as to the custody of said child or otherwise, against any person who has taken, adopted and assumed the maintenance of such child; and in such case the person so adopting, taking and assuming the maintenance of such child may adopt it under the provisions of this act, with the same effect as if the consent of such parents had been obtained. In all cases of abandonment after this act takes effect the person adopting shall proceed under the provisions of this act within six months after he or she has assumed the maintenance of such child; in such case of abandonment, the county judge may make the order provided for in this act without the consent of such parent or parents.

SEC. 12. The parents of an adopted child are, from the time of the adoption, relieved from all parental duties toward, and of all responsibility for, the child so adopted, and have no rights over it.

SEC. 13. Nothing herein contained shall prevent proof of the adoption of any child, heretofore made according to any method practiced in this State, from being received in evidence, nor such adoption from having the effect of an adoption hereunder; but no child shall hereafter be adopted except under the provisions of this act, nor shall any child that has been adopted be deprived of the rights of adoption, except upon a proceeding for that purpose, with the like sanction and consent as is required for an act of adoption under the eighth section hereof; and any agreement and consent in respect to such adoption, or abrogation thereof hereafter to be made, shall be in writing, signed by such county judge or a judge of the supreme court, and the same, or a duplicate thereof, shall be filed with the clerk of the county and recorded in the book of miscellaneous records, wherein the same shall be made, and a copy of the same, certified by such clerk, may be used in evidence in all legal proceedings; but nothing in this act contained in regard to such adopted child inheriting from the person adopting shall apply to any devise or trust now made or already created, nor shall this

act in any manner change, alter or interfere with such will, devise, or said trust or trusts, and as to any such will, devise or trust said adopted child shall not be deemed an heir so as to alter estates, or trusts, or devises in wills already made or trusts already created.

3. A Report on Adoption in Pennsylvania in 1925

REPORT TO THE GENERAL ASSEMBLY MEETING IN 1925 OF THE COMMISSION APPOINTED TO STUDY AND REVISE THE STATUTES OF PENNSYLVANIA RELATING TO CHILDREN, PART I

THE ADOPTION OF CHILDREN IN PHILADELPHIA COUNTY

Without going into the minutiae of the laws and court decisions regarding adoption which are set forth in the questions and answers on adoption in Appendix III, it is sufficient to point out that two methods of adoption authorized by the statutes are practiced in this county. In the majority of the cases—988—the adoption was secured through a court decree issued by one of the five common pleas courts or, since July, 1923, by the Civil Division of the Municipal Court . . . [p. 66].

The G. family which adopted a two weeks old girl in the summer of 1922 had had a checkered career. The wife, Mrs. G., was the youngest child of a family which had had long and active contacts with the charitable agencies of the city. Her father was a coal heaver and died of delirium tremens in 1906. Her mother was physically deformed and of unstable disposition. . . .

The mother's death left Mrs. G., then a girl of sixteen, whose upbringing had been haphazard, to say the least, as a problem for the community. Her mother had drunk and beaten her, her sisters had brought men to the house. The home conditions had been so bad that social agencies had been trying to get custody of her for some time before her mother died.

After the death of the mother, Mrs. G. did not go to the home of any of her relatives, but instead, was put to board in what was thought to be a very good home for her. . . . After about a year she and the twenty year old son in this family, later described as a "likeable" young man, eloped to Elkton and were married.

In the next five years, three sons were born to Mr. and Mrs. G. When the youngest was two years old this family was thrown on charity. Mr. G. was sent to State's prison for a term of seven to twelve years. He had been a member of a band of automobile thieves. . . .

Five months later, May, 1920, the Chaplain of the prison referred the case to a relief society. On the same day Mrs. G. reported to the society that she was ill and asked to have her three children placed. . . .

During the year 1921 a systematic effort was made to get Mr. G. out of prison. . . . Late in 1921 [he was] granted a pardon. He had completed two full years of imprisonment.

In June, 1922, Mr. and Mrs. G. petitioned for the adoption of a baby girl. The child was illegitimate and had been born in a hospital twelve days before. Its mother was a girl of twenty-one years who had apparently had no contacts with any social agency in the city although Philadelphia was apparently her residence. The adoption petition states that the child's father is unknown, although his name is recorded on the baby's birth certificate. On the second day after the petition was filed the adoption was decreed.

In September of 1922 Mrs. G. appeared at the probation department of the Domestic Relations Court and there related that she had left her husband that day on account of his threats to kill her and of his abuse and vile language. . . .

Mrs. G. reported that the baby girl had been adopted because she could have no more children and their three children were boys. Mrs. G. thought that adopting the baby would "make a better man" of Mr. G. She now wished to leave him. The next day she telephoned that she did not wish to press the matter. . . .

Not the least significant of the details of this case is the fact that the attorney employed to secure the adoption and his partner figured as the two vouchers for the adopting parents, who are described as persons of respectability and good character . . . [pp. 95-97].

Very frequently the children's agencies know of many people who wish to adopt children. It is the common experience of such agencies that they have numerous applications from families who, on investigation, turn out not to meet the standards of the agency (or in consideration of the seriousness of the step decide not to adopt); but they also usually have a larger number of approved homes than they have children in their care, who, they consider, should be placed for adoption. Their caution in placing children even in very good adoptive homes arises from two principal considerations. First, they wish to be sure that the permanent separation of parent and child is absolutely necessary for the welfare of the child. They recognize that a child's own home, though it may outwardly be far from ideal, often has in it assets for that particular child's future which no substitute could provide. With many people the desire to know their parentage and be with their own blood kindred is one of the most intense feelings they have. Many children's agencies, as they have watched the results of their activities and have come to reckon

with some of these real but intangible aspects of life, grow more and more hesitant about permanently separating parent and child. They are also skeptical of the wisdom of adopting parents trying to keep their foster children in ignorance of their parentage; many people wish to adopt only on the condition that the child will regard them as its natural parents.

The second consideration which makes social agencies cautious is the desire to protect adopting families from unwittingly taking children whose heredity casts doubts about their ability to attain the mental and moral calibre necessary to meet the standards of life of the adopting home. They have come to think that it is hazardous and often tragic to place a child in a situation in which more will be expected of him than he can possibly give . . . [p. 117].

It is generally agreed that forms of helpfulness which try to keep parent and child together are on the whole the wiser for society in the long run and the more truly beneficial to parent and child. There are, however, cases of social and personal breakdown so serious for the parent, that no amount of helpfulness would enable him to function even fairly satisfactorily. The wise and thoughtful social agency makes sure by careful investigation that such are the circumstances before it separates parent and child . . . [p. 118].

ADOPTIONS IN ALLEGHENY AND TWELVE OTHER COUNTIES IN PENNSYLVANIA

On the basis of a two year study we find that the fourteen counties, representing 58 per cent of the population, have an annual adoption rate of one per 6,569 inhabitants . . . [p. 140].

Allegheny County has twice the number of adoptions in proportion to population as Philadelphia. Erie, with a little less than four times the population of Huntington County, had over thirty-two times as many adoptions. It would be a matter of considerable interest were it possible to determine with any degree of exactness the factors operating to produce this wide variation in adoption rates. Certainly we have come to know that, as a rule, a high adoption rate is not a credit to a community; that good social conditions operate to keep families intact.

Two maternity homes and two child-placing agencies are alone

responsible for 125 of the 450 adoptions in Allegheny County. A commercial maternity hospital in Erie County, securing its patients from all parts of the country and placing its babies (71 of them during 1922-23) throughout an equally wide area, can easily account for Erie's high adoption rate, since these adoption decrees are all granted through the Erie Court of Common Pleas. All parties to the transaction are in some cases non-residents. . . .

In the State study of thirteen counties there were two instances in which a child was adopted twice during the period covered. In both cases the second adoption was by the natural parents of the child . . . [p. 141].

In only one case, involving two children in the same family, was there any record of a petition being refused. No doubt other cases occurred, but it was impossible to get any data on them, as the papers are filed only after the decree is granted.

There were 31 cases in which there was no consent signed to the adoption. The majority of these were instances in which the child had been for some time in the foster home. . . .

Twenty-three records appearing on the indexes or dockets could not be found when asked for in the prothonotary's offices. Six counties had from one to eight records missing. One county had eleven records out, 3 of which were found and returned to the Courthouse. It was impossible to locate the other eight. The officials responsible seemed quite undisturbed by the fact that these documents of such grave importance to the individual child seemed to be irrevocably lost . . . [p. 142].

In 309 cases out of 1,096 adoptions of minors (28 per cent) there was no record of the time in the adoption home, while almost 100 children were not yet in the adoption home when the adoption was petitioned. The shortest time recorded in the foster home before the petition was presented was two days, the longest forty-four years. The youngest adoptee was five days old; the oldest, forty-four years. This contrasts with Philadelphia's figures of five days and fifty-nine years.

In forty-seven instances children were adopted into homes in which one or both of the petitioners signed their mark, not their

name. In only ten of these forty-seven cases were the adopting parents relatives of the child.

Out of 1,160 adoptions by court decree there were 732 cases in which no address was given for the affiant; 392 cases had no affidavits. There were but 36 cases in which names and addresses of affiants were given. . . .

Among the instances of misstatements on adoption records may be mentioned the case of an illegitimate child in which the same name was given for both the father and mother, presumably to make it appear that the child was born in wedlock. . . .

The majority of adopted children had not been born out of wedlock, as is commonly supposed . . . [pp. 142-43].

The outstanding fact of grave importance is the vast number of children who are adopted through our courts without adequate study of the home from which they come and of the home to which they are going . . . [p. 146].

On the other hand, if the court knew nothing of the adoptability of that child, did it know more of the suitability of the adoption home in the following cases?

A petition was filed in March, 1923, for the adoption of three children aged 7, 9, and 11 years, and the following day the decree of adoption was granted. The children had been in the home of the foster parents for four years. They had been placed there by their father, Mr. W. after the death of his wife. Mrs. W. had been considered a very fine woman, much respected in the community. . . .

Shortly after the adoption had gone through the case came to the attention of a welfare agency. Through an attorney representing the township school district the agency was asked to make an investigation; the children had attended but four weeks of school during the 1922-23 term. When the children did appear in school they were poorly dressed and very dirty.

In its investigation, the welfare agency found the home (a farmhouse) very scantily furnished, extremely dirty and most untidy. The yard gave the same appearance and the back porch was piled high with boxes and rubbish. The R. family was well known to the District Attorney's office; Mr. R. had been arrested a number of times. The directors of the poor had furnished relief for the family.

In August 1924, Mr. and Mrs. R. were arrested for bootlegging when the County Detective and a detail of State Police put an end to what was said to have been an important source of illegal liquor. . . .

Mr. R. was sent to jail for six months and a fine of \$200 was imposed. Mrs. R.

was given a suspended sentence. Their farm was sold at sheriff sale and the children were placed temporarily in a children's home. . . .

Mrs. R., incensed at the separation from the children, kidnapped them one morning from the children's home and caused much excitement on one of the down town streets. . . . The children were returned to the children's home and Mrs. R. was sent to jail. The case was heard in Juvenile Court which ordered the children to be cared for at the children's home until Mr. R. serves his sentence and then the case is to be reheard in court and a new decision handed down . . . [pp. 147-48].

In 1918 a case was brought against Mrs. D. for assault and battery and and neglect of a foster child. . . .

In August 1920, Mrs. D. answered an advertisement in a newspaper, offering a child for adoption. On January 23, 1922, after seventeen months in the foster home the child was legally adopted by Mrs. D. and her husband. As usual the affidavits testified that the petitioners were "Persons of good moral character." It is known that Mrs. D. is a prostitute. The three affiants were an alderman of rather dubious character, the real estate man from whom the D.'s rented and the child's grandmother who had advertised it for adoption. . . [p. 150].

4. The Alabama Law of 1931

"AN ACT (No. 405) TO AMEND SECTION 9302 OF THE CODE OF ALABAMA, 1923," ALABAMA GENERAL ACTS, 1931, P. 504

Be it Enacted, etc. That Section 9302 of the Code of Alabama, 1923, be amended so as to read as follows:

SECTION 1: "Section 9302." A. *Who may petition for adoption of minor child.*—Any proper adult person, or husband and wife jointly, may petition the probate court of the county in which he or they have a legal residence, or of the county in which the child resides, or of the county in which the child had legal residence when it became a public charge, or of the county in which is located any agency or institution, operating under the laws of this State, having guardianship and custody of the child, for leave to adopt a child and for a change of the name of such child. Such petition for adoption shall specify the name, age and place of residence of the child and the name, age and place of residence of the petitioner, and the name by which the child shall be known; whether such child is possessed of any property, and the full description of the property, if any; whether the child has one or both parents living; in case one or both are alive, then the name or names and place or places of resi-

dence of such father and mother shall be shown unless proven to be unknown to the petitioner; provided, that if such child sought to be adopted is, by previous order of a juvenile court, or a court of like jurisdiction under the legal guardianship and permanent custody of the State Child Welfare Department or of an institution or agency licensed by the State Child Welfare Department for the care of children, then the names of parents may be omitted from such petition, in which case the court shall cause such allegation and the petition to be verified.

B. Investigation by State Child Welfare Department, or its duly authorized agents. Hearing of petition.—Upon the filing of a petition for the adoption of a minor child a copy of such petition, together with a statement containing the full names and permanent address of the child and the petitioners shall be served by the court receiving petition within five days on the State Child Welfare Department of Alabama by registered mail or personal service. It shall then be the duty of the State Child Welfare Department, through its own field agents, or through such other agencies and institutions in the county licensed by the Department for the care and placement of children, or through the county child welfare superintendent of the county of the court hearing petition, or the probation officer of the juvenile court or court of like jurisdiction of the county, under the department's supervision, to verify the allegations of the petition, to make a thorough investigation of the matter and to report its findings in writing to the court. The report shall show among other things:—(1) Why the natural parents, if living, desire to be relieved of the care, support and guardianship of such child; (2) Whether the natural parents have abandoned such child or are morally unfit to have its custody; (3) Whether the proposed foster parent or parents, is or are financially able and morally fit to have the care, supervision and training of such child; (4) The physical condition and also the mental condition of such child insofar as this can be determined. Upon the day so appointed the court shall proceed to a full hearing of the petition and the examination of the parties in interest, under oath, with the right of adjourning the hearing and examination from time to time as the nature of the case may require. If the report of the State Child Welfare Department or its duly

authorized agents, as provided herein, disapprove of the adoption of the child, motion may be made to the court to dismiss the petition.

C. *Consent when necessary, except as herein provided.*—No adoption of a minor child shall be permitted without the consent of his parents, but the consent of a parent who has abandoned the child, or who cannot be found, or who is insane or otherwise incapacitated from giving such consent, or who has lost guardianship of the child, through divorce proceedings, or by the order of a juvenile court or court of like jurisdiction, may be dispensed with, and consent may be given by the guardian if there be one, or if there be no guardian by the State Child Welfare Department. In every such case the court shall cause such further notice to be given to the known kindred of the child as shall appear to be just and practicable. In case of illegitimacy the consent of the mother alone shall suffice except where paternity has been established. In all cases where the child is over 14 years old his consent must be had also.

D. *Decree, revocation of order; annulments; reports.*—If the court is satisfied that the natural parents have just cause for desiring to be relieved of the care, support and guardianship of said child, or have abandoned the child, or are morally unfit to retain its custody, that the petitioning foster-parent or parents is or are financially able and morally fit to have the care, supervision and training of such child; that such child is suitable for adoption in a private family home, and that such change of name and guardianship is for the best interest of the child, it shall make an interlocutory order setting forth the facts and declaring that from the date of the final order of adoption in such case, if such final order be afterwards entered, as hereinafter provided, such child, to all legal intents and purposes, will be the child of the petitioner or petitioners and that its name may be thereby changed. Such final order of adoption shall not be granted until the child shall have lived for one year in the home of the petitioner and shall have been visited during the said period at least once in every three months by an agent of the State Child Welfare Department or its duly authorized agents as provided herein. At any time before the entry of such final order of adoption, the court may revoke its interlocutory order for good cause, either

of its own motion or on the motion of the State Child Welfare Department or its duly authorized agents as provided herein, or on the motion of the natural parent or parents of such child, the original petitioner or petitioners, but no such revocation shall be entered unless ten days notice in writing shall have been given to the original petitioner or petitioners (unless he or they make the motion), or unless the original petitioner or petitioners shall have been given an opportunity to be heard. If at any time after his adoption the adopting parents fail faithfully to perform their obligation to the child, or if within five years after his adoption, a child develops feeble-mindedness, epilepsy, insanity, or venereal disease, as a result of conditions existing prior to adoption, and of which the adopting parents had no knowledge or information, a petition setting forth such conditions may be filed in the court which entered the decree of adoption and if such conditions are proved to the satisfaction of the court, such adoption may be declared null and void. The court shall thereupon make proper disposition of such child by commitment to an appropriate state institution as provided in the laws of Alabama, or refer such child to the juvenile court or court of like jurisdiction of the county in which he resides or is found. Upon the entry of a final order of adoption the judge or the clerk of the court shall notify the State Child Welfare Department of the action taken, giving the names and addresses of the natural parents, if known, or of the child's next of kin, the age and the name of such child before and after adoption, and the names and addresses of the foster-parents. Said State Child Welfare Department shall likewise be notified of any subsequent revocation of such order of adoption or of any annulment of adoption. Copies of all reports of adoptions and reports of revocations of order of adoption and of annulments shall be mailed to the Registrar of Vital Statistics of the State Department of Health. Upon receipt of copy of any final order of adoption the State Registrar of Vital Statistics shall cause to be made a new record of the birth in the new name, and with the name or names of the adopting parent or parents. He shall then cause to be sealed and filed the original certificate of birth with the decree of the court, and such sealed package shall only be opened upon the demand of said child, or his natural or adopting parents, or by the

order of a court of record. Upon receipt of copy of order of annulment of adoption, he shall restore the original name of the child and the names of his parents to the record of birth of such child.

E. Record of petition; decree and proceedings; status of adopted child.—The petition and all decrees in adoption proceedings shall be recorded in a book kept for the purpose and properly indexed; such book shall be a part of the permanent records of the probate court in which such proceedings are had and all reports and affidavits shall be properly filed. The files and records of the court in adoption proceedings shall not be open to inspection, or copy, by other persons than the parties in interest and their attorneys, and representatives of the State Child Welfare Department, except upon an order of the court expressly permitting the same. When the final decree of adoption shall have been entered the natural parents of the child if living shall be divested of all legal rights and obligations due from them to the child or from the child to them; and the child shall be free from all legal obligations of obedience or otherwise to such parents; and the adopting parent or parents of the child shall be invested with every legal right in respect to obedience and maintenance on the part of the child as if said child had been born to them in lawful wedlock, and the child shall be invested with every legal right, privilege, obligation, and relation in respect to education, maintenance and the rights of inheritance to real estate, or to the distribution of personal estate on the death of such adopting parent or parents as if born to them in lawful wedlock. Nothing in this act shall be construed as debarring a legally adopted child from inheriting property from its natural parents or other kin.

F. Adoption by stepfather or stepmother.—A man who marries the mother of a minor child or children, or a woman who marries the father of a minor child or children, may petition the probate court of his or her county of residence for leave to adopt such minor child or children and if desired, for a change of the name or names of such minor child or children.

G. Unlawful to advertise unless with the approval of the State Child Welfare Department.—It shall be unlawful for any person or persons, organizations, hospitals, or associations which have not been licensed by the State Child Welfare Department to advertise that they will

adopt children or place them in foster homes, or hold out inducements to parents to part with their offspring, or in any manner knowingly become a party to the separation of a child from its parent, parents or guardian except through the commitment of a juvenile court or another court of like jurisdiction.

H. *Penalty*.—Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be fined not more than \$100.00 or imprisoned in the county jail for not more than three months, one or both in the discretion of the trial court. It shall be the duty of the State Child Welfare Department to enforce the provisions of this Section.

I. If any part of this Section be declared unconstitutional by any court of competent jurisdiction, such decision shall not affect the remainder thereof.

J. All laws and parts of laws in conflict with or inconsistent with the provisions of this Section are hereby repealed.

5. A Utah Adoption Statute

REVISED STATUTES OF UTAH, 1933, TITLE 14, CHAP. 4, "ADOPTION"

14-4-1. *Who may adopt*.—Any minor child may be adopted by any adult person, or a child not a minor whose parents are both dead may be adopted by another adult person as in this chapter provided. (C.L. 17, sec. 10.)

14-4-2. *Relative ages*.—A person adopting a child must be at least ten years older than the child adopted. (C.L. 17, sec. 11.)

14-4-3. *Adoption by married persons*.—A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife, nor can a married woman, not thus separated from her husband, adopt a child without his consent, if the spouse not consenting is capable of giving such consent. (C.L. 17, sec. 12.)

14-4-4. *Consent to adoption—by child's parents*.—A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother deprived of civil rights, or who has been judically deprived of the custody of the child on account of cruelty, neglect or desertion; *provided*, that the district court may order the adoption of any

child, without notice to the parent or parents thereof, whenever it shall appear that the parent or parents whose consent is required have theretofore, in writing, acknowledged before any officer authorized to take acknowledgments, released his or her or their control or custody of such child to any agency licensed to receive children for placement or adoption under chapter 3 of this title, and such agency consents, in writing, to such adoption. (L. 25, p. 198, sec. 13.)

14-4-5. *Id. In case of deserted child.*—A child deserted by its parents or surviving parent and having no legal guardian may be adopted as in this chapter provided, without the consent of either parent, when the district court of the county where the petitioner resides shall determine that it is a deserted child. Any person desiring to adopt a deserted child may petition such district court setting out the facts, agreeing to regularly adopt the child, if found to be a deserted child, and praying that the court determine the fact. Notice of such proceedings, by personal service, publication or posting shall be served in such manner as the court may direct and may deem most likely to give notice to the parents, and the court shall require such further notice of the proceedings to be given to the kindred of the child as shall appear to be just and practicable. (L. 29, p. 23, sec. 20.)

14-4-6. *Id. By child, when necessary.*—The consent of a child, if over the age of twelve years, is necessary to its adoption. (C.L. 17, sec. 14.)

14-4-7. *Jurisdiction of district court.*—Adoption proceedings shall be commenced by filing a petition with the clerk of the district court of the county where the person adopting resides, and the petition to adopt and all orders, decrees, agreements and notices in the proceedings shall be filed in the office of the clerk of such court. (*Code Report.*)

14-4-8. *Procedure—contract of adopting parents.*—The person adopting a child and the child adopted, and the other persons whose consent is necessary, must appear before the district court of the county where the person adopting resides, and the necessary consent must thereupon be signed and an agreement be executed by the person adopting to the effect that the child shall be adopted and

treated in all respects as his own lawful child; *provided*, that if the persons whose consent is necessary are not within the county, then their written consent, duly acknowledged in the manner provided for the acknowledgment of deeds, shall be filed at the time of the application for adoption. (L. 25, p. 198, sec. 15.)

14-4-9. *Id. Order of adoption.*—The court must examine all persons appearing before it pursuant to the preceding provisions, each separately, and, if satisfied that the interests of the child will be promoted by the adoption, it must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting. (C.L. 17, sec. 16.)

14-4-10. *Name and status of adopted child.*—A child when adopted may take the family name of the person adopting. After adoption the two shall sustain the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation. (C.L. 17, sec. 17.)

14-4-11. *Rights and liabilities of natural parents.*—The natural parents of an adopted child are, from the time of the adoption, relieved of all parental duties toward and all responsibility for the child so adopted, and shall have no further rights over it. (C. L. 17, sec. 18.)

14-4-12. *Adoption by acknowledgment.*—The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such, and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption. (C.L. 17, sec. 19.)

14-4-13. *Annulment of adoption, within five years.*—If it develops that a child adopted under the provisions of this chapter is afflicted with feeble-mindedness, epilepsy, insanity or a venereal infection as a result of conditions existing prior to the adoption, and the adopting parents had no knowledge or notice thereof, such parents within five years after the order of adoption was filed may file a petition in the district court where the adoption proceedings were had, setting forth such facts and praying that the adoption be vacated and annulled. If such facts are made to appear to the satisfaction of the

district court, it may by decree vacate and annul the order of adoption and commit the child to the guardianship of the juvenile court and probation commission. In every such proceeding it shall be the duty of the county attorney to appear and represent the interests of the child. (L. 19, p. 1, sec. 1.)

6. Parental Consent to Adoption in California

STATUTES OF CALIFORNIA, 1937, CHAP. 366

SECTION 1. Section 224 of the Civil Code is hereby amended to read as follows:

224. A legitimate child can not be adopted without the consent of its parents if living; provided, however, that after the custody of any child has by any judicial decree been given to the mother, and the father for a period of one year shall wilfully fail to pay for the care, support and education of such child when able to do so, then the mother alone may consent to such adoption, but only after the father has been personally served with a copy of a citation requiring him to appear at the time and place set for the appearance in court under section 227 of this code; if the father can not be located for personal service, the same may be made by publication as provided for the publication of summons in section 413 of the Code of Civil Procedure; nor an illegitimate child without the consent of its mother if living, except that consent is not necessary in the following cases:

1. When a father or mother has been judicially deprived of the custody and control of such child by order of the juvenile court, declaring such child to be free from the custody and control of his parents as provided in the "Juvenile Court Law," approved June 15, 1915, or any act or acts superseding or amending the same.

2. Where the father or mother of any child has deserted the child without provision for its identification.

3. Where the father or mother of any child has relinquished said child for adoption as provided in section 224^m of this code.¹

¹ [Sec. 224^m—of the Code is as follows:

"The father or mother may relinquish a child for adoption by a written statement signed before two subscribing witnesses and acknowledged before the secretary or assistant secretaries of an organization licensed by the state department of social welfare

7. The Minnesota Children's Bureau and Adoption

SEVENTEENTH BIENNIAL REPORT OF THE MINNESOTA STATE BOARD OF CONTROL, PERIOD ENDED JUNE 30, 1934

The foster home work as portrayed in the Children's Bureau by reports received from child placing agencies, from child welfare boards, and from the courts, shows no marked change in rate of intake during the past biennial period. The adoption petitions received, totaling 729, exceed only slightly the 717 petitions received in the previous biennial period and the 706 transmitted during the period ended in 1930. The free home placements have shown a greater variation, ranging from 630 in 1930 to 532 in 1932, mounting to 587 for the latest period. Monthly reports show the average intake for adoptions to be about thirty. The highest number in one month received in the period was in July, 1932, when fifty-one were received. The lowest number in one month, twenty, was received in May, 1934. Free home placements accumulate at the rate of approximately twenty-four a month. The highest number received in one month was thirty in October, 1932; lowest number, twelve, in February, 1934. Both low levels occurring in 1934, together with other figures, indicate that with slight fluctuations there has been some decline toward the end of the biennial period. . . .

The Children's Bureau notes with interest the trend of the courts in connection with adoption cases. Out of the 970 adoption cases that were carried in the bureau, there were but fifty-five instances

to find homes for children and place children in homes for adoption. Such relinquish ment, when reciting that the person making it is entitled to the sole custody of the minor shall when duly acknowledged before such officer be prima facie evidence of the right of the person making it to the sole custody of the child and such person's sole right to relinquish.

"In cases where a father or mother of a child resides outside the state of California and such child is being cared for and is placed for adoption by an organization licensed by the state department of social welfare to place children for adoption, such father or mother may relinquish the child to that organization by a written statement signed by such father or mother before a notary on a form prescribed by the organization, and previously signed by the secretary or assistant secretaries of the organization, which signifies the willingness of such organization to accept the relinquishment.

"The relinquishment authorized by this section shall be of no effect whatsoever until a certified copy is filed with the state department of social welfare." (Amendment approved June 19, 1931; Stats. 1931, p. 2401.)—EDITOR.

in which the district court either waived or disregarded the recommendation of the State Board of Control. This figure shows a decline from seventy-one cases waived in 1932 and a marked decrease from the ninety-five cases waived in the biennial period ended in 1930. In several of these fifty-five cases the court had been supplied with full information by a certified child-placing agency so that the actual number of cases that have been passed upon without any investigation has been reasonably small for the two-year period. The bureau continues to cooperate with the courts to the fullest measure, with a hope that each child under consideration for adoption in Minnesota may have the benefit of an investigation, not only of the home in which he is to live, but also of the child's own history, which will be preserved for his future information. Of interest, too, is the fact that the courts following contact with adoption investigations have gradually begun to make use of the social service facilities in other types of cases. During the last year the child welfare boards have had a number of requests from the district judges for investigations in connection with divorce orders where the custody of children was involved.

The occurrence of independent placements continues to be a problem to the bureau and to the child welfare boards. Because in these cases the child has been placed and frequently has become well established in the foster home before the case comes to the attention of the bureau, ordinarily it is impossible, even though the home may be very mediocre, to effect a change unless serious charges can be made. Consequently the bureau is forced to continue supervision of children in homes that do not measure up to the high standards which are hoped for in Minnesota work. The solution to this problem will be partially achieved when social agencies, child welfare board members, doctors and other professional persons working near to the unmarried mother or discouraged parent will stand ready to assist in making proper arrangements for legal commitment if no way can be devised to keep the child with his own people when the necessity for giving up a child arises.

The bureau is ever conscious, even while earnestly attempting to develop better standards in child placing and to promote an interest in foster home work, that a foster home at best is an inadequate sub-

stitute for a child's own home and should not be considered until every attempt to find a home among a child's own relatives has failed [pp. 31-33].

8. Standard Procedure in Minnesota

GENERAL INSTRUCTIONS TO CHILD WELFARE BOARDS¹ (ADOPTIONS AND FREE HOME PLACEMENTS) MINNESOTA CHILDREN'S BUREAU

ADOPTIONS

Placements frequently become adoptions. When a petition is filed in the District Court a copy is sent to the State Board of Control with the request that investigation be made and report sent to the Court with a recommendation as to whether or not the adoption should be allowed (pp. 75, sec. 8625). If the home has already been approved as a placement but there has not been a report regarding it for more than four months the Child Welfare Board is then asked to visit and send a report and recommendation so that we may be certain conditions are as satisfactory as when the original investigation was made.

On the other hand, many times the petition for adoption is our first knowledge of the child's existence in this home. Then we must proceed as in an *independent* placement, always keeping before us the fact that we are giving the child not only a home and parents but also a series of relatives of whom we want him to be proud. If the adoption is to be disapproved, definite reasons for that disapproval which will stand in Court shall be given.

The Board of Control cannot remove a child from the home, even though they disapprove the adoption. However, after the adoption disapproval has been properly filed with the Clerk of the District Court and a sufficient length of time has elapsed to permit the Court to pass upon the matter, the Board of Control may make a motion to the District Court, asking that the petition be dismissed (pp. 75, sec. 8625). Notice is served on the petitioners and their attorney at least eight days before the case is to be heard and if, after proper hearing, the petition is dismissed, then the way is cleared for the

¹ [Unpublished. Supplied by the Minnesota Children's Bureau.—EDITOR.]

Juvenile Court action in an effort to take the child out of the unsuitable home.

In all investigations for placements and adoptions, the welfare of the child must be paramount and every care must be taken to safeguard his future.

PLACEMENTS

The Child Welfare Board is *not* a child placing agency and should not take upon itself the task of finding permanent homes for those children who are removed from their natural homes. Instead, an effort should be made through the Juvenile Court to commit all such children to an authorized child placing society who then becomes the legal guardian for the child. By this method an unbiased placement is made and the foster parents are not handicapped by a possible interference on the part of the parents. Too often when independent placements are made the child finds his way into a home totally unsuited to his needs and yet from a physical standpoint a good home. The child placing agency with its trained staff and wide choice of homes has a chance to select just the right home for a particular child.

The Child Welfare Board is asked to investigate for the Board of Control two types of placements:

A. *Agency placements*.—Placements made by a duly authorized agency (pp. 26 sec. 4562-4563). Every agency who places a child in a permanent home is required to report such placement to the State Board of Control. It is understood, of course, that before the agency places the child it has carefully investigated the home and assured itself that the placement is satisfactory. However, before the Board of Control can approve the placement they must also be satisfied with the home and for this reason the Child Welfare Board is asked to visit the home and recommend to the Board of Control the approval or disapproval of the home. Action should be taken after a vote of the Board as a whole, not by a single member or the Executive Secretary alone.

B. *Independent placements*.—Unfortunately not all placements are made by child placing agencies and it is the duty of the State Board of Control and its Child Welfare Boards to make necessary

investigations for *all* children placed in homes (not relatives) for a period of more than six months and for whom no board is paid, unless such children are wards of the State Public School, who has its own agents for investigation and supervision. The responsibility of locating children independently placed is that of the Child Welfare Board, and reports of such placement should be made immediately upon their discovery.

In addition to the general principles set forth in "A" (placements of an authorized agency), the investigation of these placements must give even more careful consideration as to the fitness of the home of this particular child since no other agency is interested in the situation and the Child Welfare Board must, therefore—

1. Make careful inquiry into the child's history and the circumstances of his placement. Is he a suitable child for adoption? Was it really necessary to remove him from his family group? (See principles of investigation.)

2. See parents of child for history and make certain that they fully understand that adoption means a complete severing of their parental rights.

3. Be certain that the policy of the Board of Control which requires that whenever possible a Catholic child be placed in a Catholic home and a Protestant child in a Protestant home has been carried out. If this has not been done the question should be discussed with the natural parents and definite information regarding the resources of their own religious group should be given them.

4. If it be decided that a child is to be permanently removed from his own people make a real attempt to have a proper guardian appointed by the Juvenile Court.

With these independent placements the Child Welfare Board must continue supervision after the placement has been approved. Send a summary of visits made to the home to the Board of Control semi-annually. A blank for this purpose is approved by the State Board of Control. These follow-up visits serve to keep up the standards of the doubtful home and should be welcomed by the good home as an opportunity to secure the advice and counsel usually given by a child placing agency.

The Board of Control has the authority to request its authorized

child placing agencies to remove a child placed in an unsuitable home and, if such order is not obeyed, can institute Juvenile Court action in an effort to have the situation remedied. With an unsatisfactory independent placement an attempt should be made to persuade the parents or relatives who are legally responsible for the child to co-operate with the Child Welfare Board in making other plans for him which plans might result in his commitment to a duly authorized agency. In case their cooperation cannot be gained, then specific evidence should be presented so that the Juvenile Court will have sufficient grounds to declare the child neglected, to order his removal and to appoint a guardian for him.

Unfavorable reports on homes under the supervision of the State Public School at Owatonna should be referred either to the Children's Bureau or directly to the superintendent of the State Public School.

GENERAL PRINCIPLES FOR ALL CASES

1. Make personal *unannounced* visit to the home.
2. Secure from foster parents definite information requested in placement blanks.
3. See both foster parents—separately—so as to be certain they are united in their desires and plans for the child.
4. Personally interview at least 5 references, 3 of whom should be *women*. These references should be persons who are well acquainted with the home life of the foster parents and whose judgment is sound and unbiased.
5. Interview the family pastor and doctor in addition to other references to make certain that the child will receive proper religious training and that there is no physical disability which will make the home undesirable.
6. Verify (1) marriages, (2) divorces and (3) birth of child.
7. Give special consideration to the age and temperament of the foster parents as related to that of the child.
8. If child is more than 8 years of age interview him alone, if possible, so as to be assured that he is happy in his new home and is not being exploited. This is especially important when a child is 12 or over and there is a possibility that he may be overworked and kept out of school.

9. Secure school records for all older children.
10. Hold in the strictest confidence all information received.
11. Make duplicate copies of reports of investigation; keep one in Child Welfare Board file and send the other to the State Board of Control.
12. Send supplemental narrative report with placement blank so that a more complete picture of the home will be available. This report should also contain a brief summary of statements of each reference. This is particularly important if the home is not satisfactory.
13. If placement is to be disapproved give definite reasons for the disapproval.
14. After the placement has been approved by the Board of Control file the copy of such approval with the report of the investigation of the Child Welfare Board.

After agency placements have been approved it is then the duty of the agency making the placement to give the necessary supervision to the home and the Child Welfare Board is relieved of such responsibility. However, if unsatisfactory reports of the home are independently received they should be passed on immediately to the Children's Bureau.

GENERAL INFORMATION FOR NEW FIELD AGENTS¹
(ADOPTIONS AND FREE HOME PLACEMENTS)
(MINNESOTA CHILDREN'S BUREAU)

TYPE OF CASES FOLLOWED; DEFINITIONS; LAWS
INVOLVED; ADOPTIONS

A case is not considered as adoption until a petition has been definitely filed in district court. The subject of the petition may be related or not related, minor or adult. The State Board of Control is required by law to investigate cases where minors are involved as follows: (1) verify the allegations of the petition (such as marriage of petitioners, birth of child, authenticity of consent and divorce of parents or foster parents, etc.); (2) investigate conditions and antecedents of the child; (3) investigate the foster home.

LAWS: Sections 8624 to 8634 inclusive Mason's 1927, page 85 *New Compilation of Laws*.

¹{Unpublished. Supplied by the Minnesota Children's Bureau.—EDITOR.]

FREE HOME PLACEMENTS

Any child under 16 permanently (more than six months) placed with other than a relative or legal guardian is under state supervision as follows: (1) State Public School (Children's Bureau has no part in these cases); (2) private agencies (Children's Bureau inspects); (3) directly under the Children's Bureau and Child Welfare Boards as independent placements; (4) wards (followed by the Guardianship Department in the Children's Bureau).

LAW: Sections 4561 to 4563 G. A., page 29 *New Compilation of Laws*.

IMPORTATIONS

Any agency sending a child from out-of-state, (relative or other) into Minnesota for placing out or adoption must have the consent of the State Board of Control before placing the child. The State Board of Control wishes to take direct action on these cases so reports should always be sent to the Children's Bureau for decision. Requirements—(1) complete history of the child; (2) investigation of the foster home; (3) bond to be filed by the out-of-state agency.

LAW: Section 4564, page 30.

EXPORTATIONS

Any person or agency (excepting a parent or legal guardian) sending a child out-of-state for placement must have the consent of the State Board of Control. Requirements—(1) history of child; (2) investigation of foster home in other state; (3) consent of other state.

LAW: Section 4565, page 31.

DEPORTATIONS

Non-resident children found dependent or neglected in Minnesota may be adjudged dependent in Juvenile Court and referred to the State Board of Control for deportation. The Children's Bureau should have full information and will need time to correspond with the other state.

LAW: Section 4447, page 34.

GENERAL PLAN OF FOLLOWING CASES

The Adoption and Placement Supervisor assumes responsibility for following the cases listed above, after they have been made up

under one of the classifications. Each new case is referred automatically to the Child Welfare Board (if any) and followed with the Child Welfare Board if results are satisfactory. When problems arise the case is referred to the District Representative. If for any reason the District Representative wishes to have any county handled differently we shall be glad to change. *Kardex*—every active case has a card in our kardex, filed in accordance with county of placement under the name of the child. Cross reference index shows names of foster parents and also of children alphabetically filed. Kardex is for assistance of all staff members and is open to you at all times.

RESPONSIBILITIES OF CHILDREN'S BUREAU AND CHILD
WELFARE BOARD IN FOSTER HOME WORK

Direct responsibility.—I. Investigation (within 30 days) of all adoption cases referred by court, except State Public School cases and agency cases, to include:

- A. Interview with both petitioners (also child if over 14 or if it seems advisable with younger child).
- B. Interviews with enough reliable, competent (by reason of the knowledge of this particular home) references to verify information given by petitioners and to have good understanding of the home as to health, finances, character and moral standing, religious life, etc.
- C. Investigation of child history through contact with foster parents, parents or relatives. Verification of (1) birth, (2) legal custody, (3) consent of parents, etc.
- D. Fill in blank 58C. Narrative report may be in accordance with outline (see sample record) or in chronological form, as preferred.
- E. Recommendation of local child welfare board—or in emergency cases the recommendation of the District Representative. Note: In problem cases it is important to have the action of the Child Welfare Board to secure support for further court action.
- F. Clearing in the State Registration Bureau. We suggest that names of relatives, etc. be cleared separately after the investigation is completed. This is not done routinely.
- G. When the investigation has been made by the District Repre-

sentative please have your Secretary route the case to the Supervisor of Adoptions and Placements after it has been passed to the Supervisor of Records.

II. Investigation and supervision of free home placements:

- A. Investigation as outlined for an adoption case. It is important that an investigation be made as soon as possible after we learn of the case so that any change in plan may be made early.
- B. Supervisory visits to the foster home should be made at least twice a year until the child is sixteen or has been adopted.

III. Investigation of importation and exportation cases:

Same type of investigation as above.

Indirect responsibility.—I. Children placed by private agencies:

- A. Visit to the foster home if requested by the Children's Bureau.
- B. Present case to the Child Welfare Board to learn if the family is known to any members and to have the recommendation of the Board. If in the home call or board discussion there is any adverse criticism this should be reported to the Children's Bureau to be taken up by the Supervisor of Adoptions and Placements with the agency. Treatment in agency cases should be left to the agency altho in extreme cases the Children's Bureau may step in and make full investigation or take other action (Section 4563, page 26).

MISCELLANEOUS

1. Report to us any violations of laws or regulations in placement or adoption field.
2. Check up on all children that are "said to be adopted" securing enough information so that the adoption may be verified either in Children's Bureau or in the local Clerk of Court's office.
3. Help with the campaign to prevent the independent placement of children by
 - a) Assisting unmarried mothers and others to make proper plans when they are contemplating placements. Section 4561 page 25—illegal for mother to place child and for foster parents to accept.
 - b) Advising child welfare boards, doctors, attorneys, etc. of the laws and regulations and asking their aid in directing mothers

properly. Section 4567, page 28—No agency or person to place children without being certified.

- c) Supply interested doctors and others with lists of certified child placing agencies. Note: We will send these out at your request.

IDA M. MATUREN, *Supervisor
Adoptions and Placements*

9. A State Report on Adoptions in 1935

ANNUAL REPORT OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE FOR THE YEAR ENDING NOVEMBER 30, 1935

When the law was passed for the investigation of adoptions, in the cases of children under fourteen years of age, many persons predicted that the number of adoptions in this Commonwealth would show a decided decrease because people would forego adopting children rather than have public officials inquiring into their affairs. Accordingly, a close watch has been kept to see if a decrease in the number of petitions for adoption followed our entrance into this new field.

After four years, it is gratifying to note that instead of the predicted decrease, there has been an increase. During the year 1932, 686 investigations were made; in 1933 there were 659; in 1934 the number reached 706 and during 1935 the total was 760. The increase in the number of petitions for adoption is to our minds natural. When the general public realizes that there is little danger in adopting a normal child, there will be a greater increase in the number of children taken into homes. Experience has proven to organizations engaged in this work over a period of years that few well-planned adoptions have resulted in disappointment. It is readily understood that a child of good parentage and of average mental ability, when placed in the home of ordinary people, will grow up to be a credit to his new family. But, when the child of parents, either one of whom was lacking in mental, physical and moral background, is placed in the home of a couple likewise lacking in the same qualities, the chances of success are small. Before a child is placed for adoption a thorough study of the parents' background should be made, and the child given a physical and mental examination.

Since one good adoption will do more than anything else to find proper homes for other children, it follows that every one interested in the work should endeavor at all times to maintain a high standard. Now that it is known that an investigation is made by the Department of Public Welfare in cases of adoption, there is little chance of fraud being perpetrated. At least, the outstanding facts in every case are presented to the Probate Courts. Instead of meeting resentment on the part of persons seeking to adopt children at the time investigations are made, our experience has been that once such persons become acquainted with our work they are eager to follow advice. Without doubt there are some who have refused to seek children because of investigation, but plenty of excellent homes can be found to replace those of persons who resent the existence of the law.

The increase in the number of adoptions is not limited to the Commonwealth of Massachusetts, as records show that other sections of the United States have more adoptions than ever before. A study of the situation reveals that in the past decade thirty-nine states have enacted laws governing adoptions, and these laws have all tended to take the subject out of the realm of secrecy, doubt, and confusion.

In four years there has been a decided improvement in the character of adoptions as a whole. There is, however, one weakness in the system which as yet has not been corrected. Some children have been placed under such poor conditions that the Probate Courts will not allow the petitions, yet they cannot be removed from the homes except in cases of culpable neglect. These situations give us much concern but up to the present time there has been no solution of this serious problem . . . [p. 26].

STATISTICS FOR YEAR ENDING NOVEMBER 30, 1935

Investigation completed through November 30, 1934.....	2,362
Pending November 30, 1934.....	44
Notices received from courts, December 1, 1934, to November 30, 1935.....	760
Total.....	3,166

Investigations completed December 1, 1934, to November 30, 1935.....	729
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For adoption of *legitimate* children:

By relatives.....	202
By persons other than relatives.....	65
Total.....	267

For adoption of *illegitimate* children:

By maternal relatives*.....	197
By "alleged relatives".....	19
By persons other than relatives.....	231
Withdrawn before investigation.....	1
By relative by adoption.....	1
Total.....	449

For adoption of <i>foundlings</i>	4
Investigation not required—children over 14.....	4
Petitioners removed from state leaving no address.....	1
Investigation made by private society.....	4
(Pending December 1, 1935, 74)	

Reported to court:

Investigated and approved.....	662
Investigated and disapproved.....	53
Petitioners agreed to withdraw.....	5
Total.....	720

Report of investigation not required.....	9
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Notices received showing disposition by courts:

Approved and granted.....	658
Approved and dismissed.....	5
Disapproved and dismissed.....	6
Disapproved and granted.....	21
Withdrawn.....	1
Total.....	691

* Of these, 121 petitions were by the mother and her husband.

10. The Experience of Alabama

FIRST ANNUAL REPORT OF ALABAMA STATE DEPARTMENT OF PUBLIC
WELFARE FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1936

DIVISION OF ADOPTIONS

. . . . The present adoption law provides that a social investigation shall be made by the State Department of all adoption petitions filed in the probate courts of the 67 counties. . . . The following table shows the number of children involved in petitions for adoption during each year of a four-year period together with the number of children represented in petitions dismissed by the courts:

Year	No. of Children Involved in Adoption Petitions	No. of Children Represented in Petitions Dis- missed by the Courts
1932-33	182	50
1933-34	164	32
1934-35	198	43
1935-36	191	54

The table below shows the reasons for disapprovals and withdrawals of petitions for the year 1935-1936.

Child not subject for adoption	31
Foster home not suitable for child	15
Adoption unnecessary	4
Case involved question of custody rather than adoption	2
Information on petition incorrect; another petition filed	1
Information on petition incorrect	1

Within the five years of the operation of the present adoption law, there have been only 18 instances in which the probate court disregarded the recommendation of the State Department . . . [pp. 45-46].

The study by the [United States] Children's Bureau¹ offers the focal point of interest in work for the past year. The representative

¹ [The report of the United States Children's Bureau investigation of adoption in a number of representative cities and states had not been published by January 1, 1938.—EDITOR.]

of the Bureau visited several counties and interviewed probate judges concerning the law. The following, taken from the field notes, gives some idea of the opinion of the judges regarding the administration of the law:

The opinions of the four judges who had experience with adoption under both the old law and the new law were interesting. Two of the judges very definitely stated that they felt the present adoption law was far superior to the old one since it prevented people from putting through an adoption on the spur of the moment that they later regretted. One judge realized that the old law was outmoded and that a new one was essential but wished the new one were less cumbersome. The fourth judge apparently was not in sympathy with the whole principle of adoption. He explained that he frequently discouraged adoption and recommended transfer of custody instead with the result that he had had only six adoptions in the four years since the present law was passed and stated that the number in the same length of time under the old law was even fewer than this. . . .

In the remaining four counties some reservations were expressed. In one county the judge could see no need for a detailed investigation when one of the 'better families' wished to adopt a child. However, he was satisfied with the reports sent to him by the State Department. He has no desire to have any of the details of the investigation but wants only the final decision of the department. In his opinion the disapprovals are not always justified and he told of several cases in which he had granted the adoption in the face of a disapproval from the State Department. . . .

In none of the counties visited was it the practice to ask for the presence of a representative from the State Department at a hearing on a contested case but in five counties the judges stated that the local worker was always available and would be glad to come on request. In fact it was a regular occurrence for the worker to go over the whole investigation on the case with the judge prior to the hearing or the signing of the decree. In another county the judge said that the worker from the State Department frequently discussed cases with him and he was glad to have her to do this as it gave him more information on which to base his decision. In one county the judge criticized the State worker for taking his time to discuss cases with him. In an occasional case in this county a representative from the Department has been present during a hearing but it was not clear whether or not he had requested her presence. He stated that the State Department was always given notice of the date of hearing, however, and were privileged to come if they wish to do so. In two counties no information was received on this subject . . . [pp. 46-48].

ADOPTION IN GREAT BRITAIN

11. Parliamentary Debate in 1924 and 1925

PARLIAMENTARY DEBATES (OFFICIAL REPORT), HOUSE OF LORDS, LVI (5TH SER.; MARCH 18, 1924), 808-17; AND HOUSE OF COMMONS CLXXXII (5TH SER.; APRIL 3, 1925), 1707-17

THE DUKE OF ATHOLL: My Lords, I am aware that there is a good deal of business on the Order Paper to-day and that there are Questions following this Bill with which many of your Lordships are most anxious to deal. I will, therefore, be very much briefer in explaining the provisions of this measure than I should otherwise have been. I should also like to explain that there are three other Bills on this subject now under consideration in another place. That, at least, shows that considerable interest is being taken in the question . . . [col. 808].

There are good points in all of them, and I believe a great deal of time and trouble would be saved if it were possible for this Bill to be considered by a Joint Select Committee of members of the two Houses under a Chairman of judicial experience. All the Bills on the subject might be remitted to that Committee, and your Lordships would have the benefit of their experience on the later stages of this Bill, which, I feel certain, must be the basis on which any legislation is founded. Another way of dealing with the Bill might be to remit it to a Departmental Committee. But we have already had one Departmental Committee upon the subject and this Bill very closely follows that Committee's proposals. . . . A Departmental Committee, I think, would only delay matters. The evidence given before that Departmental Committee was published in 1920 and shows the necessity for legislation on this subject.

I will not amplify the point now, but I would point out that Britain is alone amongst English-speaking countries and, indeed, amongst most of the civilised countries of the world, in having no adoption laws. The general purpose of this Bill is to provide that when children are adopted they shall, so far as is possible and advisable, be legally adopted, thus giving the child who is adopted the same *status* and privileges, subject to certain exceptions regarding titles and settled property, as the ordinary child born in more

fortunate circumstances. Cases occur in which children are adopted, and the adopters get tired of them. They bring up children in luxury, and then get weary of them; indeed, cases have actually occurred where children have been sent to the workhouse after having experienced the full joys of sumptuous home life for some years. We want to make that impossible. This Bill provides that when a child is adopted, the new parents take on the full responsibility of parenthood, but it is also possible under this Bill for the new parents, in cases approved by the court, to get rid of these children, provided they can get them suitably re-adopted.

Take the contrary. Cases occur where the real parents of a child who has been adopted leave the child with the adopters until the child has become a real part of the home life of the adopters, and then claim the child back and become little better than blackmailers. This Bill provides that once parents have let their child go, and it has been adopted by mutual agreement by the third party, the third party takes complete control and its attendant responsibilities. . . . Questions of succession to titles and of certain forms of settled estate have been carefully safeguarded . . . [cols. 809-10].

Every care has been taken to make the provisions in this Bill fair to all three parties concerned. We have decided, after careful consideration, to keep the question of inspection of adopted children right outside the Bill. People's own children are not inspected, and why should their adopted children be inspected any more than others? . . . The question of secrecy in dealing with cases, so far as it is desirable or necessary, has been provided for. Those who wish to adopt a child have to apply to a recognised authority, and the authority that we have suggested is a county court. This follows the recommendations of Sir Alfred Hopkinson's Committee. However, our minds are perfectly open on this as on other points in the Bill . . . [col. 810].

THE LORD CHANCELLOR: My Lords, with the noble Duke's Bill the Government are in full sympathy; so much so that they are about to take steps in order to make the object one which can be effectively attained. But since Sir Alfred Hopkinson's Committee, in 1921, unfortunately recommended the county court as the tribunal which should determine the question of the propriety of acceding

to an application to adopt, there has been a great deal of trouble . . . [col. 811].

There are people who adopt children merely in order to get the money that is paid to them for adopting them, and who afterwards do not exercise due care for the child. These cases are far from being uncommon. It is essential to provide against them in any Bill which regulates adoption. In order to provide against that there is required careful inquiry into the circumstances of the person proposing to adopt, and of the child, and, generally, of the situation in which the application to the court is made. The County Court Judge has no machinery which would enable him to make such an inquiry. His function is to decide issues brought before him promptly and simply. He has a registrar, but the registrar is not the person who can be looked to to make such inquiries, nor can the clerk to the registrar (who in these days is often a very ill-paid individual) be expected to do so. The result is that the County Court Judge would have to dispose of this matter summarily. Of course, he would do his best, but he would have to do it without any of that inquiry which the noble Duke desiderates.

The proposition of the Government is to devise special machinery for making the inquiry efficiently. It is necessary to have some body which would report on these applications, after examining into them, before any judicial authority makes a pronouncement upon them. That is the whole essence of the problem. Without the solution of that no progress can be made, and, therefore, although the Government welcome the declaration of its purpose contained in the noble Duke's Bill, they are unable to look upon it as a Bill which could be passed into law with the prospect of doing any real good. . . . It requires experts to consider it . . . [col. 812].

VISCOUNT KNUTSFORD: My Lords, I know your Lordships are anxious to get to the discussion which is to come on later, and I promise you I will be very short. I must protest against this Bill because it does not go far enough. All it does is to protect the adopter of a child. . . .

It only gives legal sanction and recognition to those who seek it; only to those people who go to the county court, or whatever the authority may be, and ask for sanction for the adoption of a child.

It does not touch those who traffic in child life; it does not touch those who make a business of getting rid of unwanted children. It leaves them to go on with this abominable traffic unmolested. There are many people, as no doubt your Lordships know, who will take children and insure their lives for the purpose of getting the insurance money. There are people who will take a sum down when adopting a child, and that child very soon becomes an unwanted encumbrance . . . [p. col. 813].

The Committee which sat in 1920 reported as follows: "The establishment of a legal sanction for adoption"—that is, this Bill—"will leave untouched a large number of cases where legal sanction is not sought for. . . . There must be control to eliminate bad homes and bad surroundings. The absence of this"—just listen to this—"has resulted in an undesirable traffic in child life with which no one can interfere. The time has come when the State should have cognisance of all adoptions." And they recommended that "any individual or association who arrange for the transfer or entire control of a child should be legally obliged to notify the fact to the local authority of the place where the child will reside." No one in this House will deny the few minutes we give now to protect these children. Every board of guardians in England has petitioned that the registration of the adoption of children should be made compulsory, and if this Bill is amended so as to make notification of adoption compulsory, we shall not only safeguard the adopters of children but we shall put an end to this abominable traffic in child life. These children have no voice, no vote themselves. They have only one life, and it is "up to us" to see that that life is not one of long and intolerable misery.

LORD BANBURY OF SOUTHAM: My Lords, no one can have listened to the speech of the noble Viscount who has just addressed the House without realising the desirability of an extension of the provisions of this Bill with regard to the adoption of children, but so far as the other part of the measure is concerned, I hope the noble Duke will agree to leave it out when we come to Committee. It deals with property, and it says that where a child is adopted that child, so far as regards property, shall be placed in the same position as though he were the adopter's own child. You have done

in the last few days a good deal of mischief so far as property is concerned. There is the Legitimacy Bill, the effect of which no one can foretell, and I really cannot see why, in a Bill dealing with the adoption of children, you should bring in new laws relating to property [cols. 814-15].

LORD GORELL: My Lords, I do not intend to stand for more than one moment between your Lordships and the subsequent Orders on the Paper. I raised the question of the adoption of children last month, and I have a Question on the Paper for next week dealing with the subject. I had intended to say very much what the noble Viscount, Lord Knutsford, has already said about this Bill. The noble Duke who introduced it said that it followed the findings of the Departmental Committee which reported in February, 1921. It follows only one-third of their recommendations. The Report of that Committee is divided into three parts. This was the first of the matters which they declared to be urgent. The second of the matters, which also they declared to be urgent, was the whole question of safe-guarding children who were adopted from improper motives where full legal adoption was not desired. That seems to me to be far the most important side of child adoption, and far the most urgent aspect of it, and there is no Bill of which I am aware that deals with the subject at all.

The third subject with which Sir Alfred Hopkinson's Committee dealt was that which is now the basis of the Legitimacy Bill, so that we have two Bills to deal with the first and third matters upon which the Committee reported, and none to deal with the second. . . . I hope that I shall be able to obtain a little more information from His Majesty's Government next week than was accorded to your Lordships last month.

THE DUKE OF ATHOLL: My Lords, I listened with pleasure to the remarks of the noble Lord, Lord Banbury of Southam, on this subject. I will only say that in preparing this Bill I knew well that we should have his meticulous eye watching it, and that I am very much relieved that he has at least approved the principle of the Bill. With regard to the inheritance of property, I think, if I may say so with respect, that the noble Lord is entirely in error in his objection to the provisions of this Bill, because we have provided for such cases as he mentioned and are quite willing to make further

provision, in Committee, if this should prove necessary. It is surely very easy for a testator, when he adopts a child, to alter his will, if he so desires, by providing that the adopted child shall not succeed, and there is nothing to prevent his leaving all or none of his money to such a child. So far as settlements are concerned, the Bill expressly rules out settlements made before the child was adopted [cols. 815-16].

If the Government set up a Committee of Inquiry, I hope it will be a real Committee of Inquiry set up without delay and with the real purpose of getting the Bill passed. In the meantime, the noble and learned Viscount suggested that this Bill should be read a second time by your Lordships' House, and I naturally concur in that view [col. 817].

SIR GEOFFREY BUTLER: I beg to move, "That the Bill be now read a second time."

This Bill legalises the practice by which a person takes the child of another into his own home and keeps it as his own. The practice has a venerable and not uninteresting history, but I can spare the House any discussion of it, because we are, on this subject, starting with a completely clean sheet. The law of England, and the social life of England, have never known the practice of adoption [col. 1707].

Of all methods of providing for parentless children, one method in particular has, at the present moment, come into progressing favour. That is this system of adoption. I have often asked myself why that should be so, and I think that it would be very difficult to say, unless that the breakdown of a former rather rigid conception of parental authority brings home with increased poignancy to this generation the miserable state of those children who are without the happiness which a home, and a home alone, can bring; and, conversely, the War gave to this country a devastated region, that is the homes of England; and many people find in this process of adoption, at present unrecognised and unofficial, what one might almost call a sacramental ministry of reconstruction. But the worst of it is that at present it labours under a very great disadvantage by not being recognised in law [col. 1707].

No doubt it will be pointed out later in this Debate that uses bring

here, as everywhere, abuse, and I do not hesitate to say that at present in many sections of the country adoption is being carried on under most unsatisfactory conditions. The unwanted child, nobody's child, is subject to no trade union restrictions, and the unscrupulous may use the process of adoption very easily to secure another pair of hands to work at a cheap price. . . .

Therefore, the first point which I make is this. I am not merely asking you to inaugurate a new state of things, but I am asking you to regulate a practice that has long been in operation. In this case, as has happened very often, other parts of the Anglo-Saxon community have outstripped us. In every State of Australia and New Zealand adoption in certain conditions has been the rule for some time . . . [col. 1708].

In Canada you have adoption common to all the Provinces, and a peculiarly interesting form of it has been thought out and is in practice in the province of British Columbia; and in the United States, beginning in 1851 with the progressive and enlightened State of Massachusetts, every single state of the union has now adopted it under slightly differing conditions. In England, on the other hand, matters connected with the custody of infants always formed part of a rather jealously guarded jurisdiction, the Court of Chancery . . . [col. 1709].

If the House will permit me, I want to give a short account of the Parliamentary history of this question. . . . The first item in the Parliamentary history of this matter was the appointment, on 3rd August, 1920, by the then Home Secretary (Mr. Shortt) of a Home Office Committee under the chairmanship of a very distinguished former Member of the House, Sir Alfred Hopkinson. Upon that Committee there sat my right hon. Friend the present Minister of Health, Lady Norman, Mr. James Seddon, Mr. C. E. B. Russell, and Mr. F. W. Sherwood, an authority on the law of children perhaps without an equal. They sat on twenty-one occasions and they heard twenty-six witnesses. I observe from the papers that the total cost to the country was £203 17s. 9d.

Exactly a year later I find that my right hon. Friend the present Minister of Health and the Noble Lady who sits for the Sutton Division (Viscountess Astor), whose name I am proud to have on

my Bill to-day, were demanding why there had been no legislation and why the evidence collected by that Committee had never been given to the public. . . . For the right hon. Gentleman, the former Secretary for Home Affairs, at the very moment when, as he told us the other day, his mind was magnificently brooding upon the European situation, and upon the more than Grand Design for terminating its troubles, was devoting his attention to a microscopic investigation of the situation I have just described with a view to making recommendations carrying the matter a step further. The result of his cogitations was, oddly enough, another Home Office Committee, which was appointed under the chairmanship of a judge of the Chancery Division of the High Court, Mr. Justice Tomlin, and it contained in its composition the Noble Lady, who is now Parliamentary Secretary to the Board of Education, and other distinguished experts, including Mr. R. W. Baker, Mr. Gwyer, Miss Jewson, and Mr. Harris, of the Home Office, whose knowledge in this connection is probably unparalleled. This Committee was appointed on 4th April. . . . The members of that Committee sat for one year. They have held 22 sittings and have examined 30 witnesses and I learn from the reply to a question which I addressed to the Home Secretary a short time ago that they are about to consider the nature of their report.

It may be desirable for the House to compare the remit to the first and to the second Committee. The first was to consider whether it is desirable to make legal provision for the adoption of children in this country; and, if so, what form such provision should take. The remit to the second Committee was to examine the problem of child adoption from the point of view of possible legislation and to report on the main provisions which, in their view, should be included in any Bill on the subject. The distinction between the two remits is rather subtle . . . [cols. 1710-11].

The main part of the Report of Sir Alfred Hopkinson's Committee dealt with proposed forms for the legal provision of adoption—the nature of the public sanction necessary, the question of appeal, the nature of the consents to be obtained before legal adoption could take place, the persons to be considered as suitable adopters, the check to be kept after adoption has taken place by means of some

form of inspection, the question of the legal effect upon the property of the adopted child, the legal effects of adoption generally, and the possibilities of revoking adoption. . . . Yet on the top of the Hopkinson Committee we have had 30 fresh witnesses examined, and, though a whole year has passed, the second committee is sitting still . . . [col. 1712].

If it is possible to narrow the issue at all, what are the two main questions which come up for consideration? . . . [col. 1713].

The first is: What is the desirable machinery for giving official ratification to adoption? In the year 1917 a very learned judge of the Appellate Court of the State of New York expressed *obiter*, in his judgment on an important case, the view that proceedings for adoption are not, on ultimate analysis, judicial proceedings at all, the position really being that you have a contract for adoption made effective by the Court, and the only judicial element in the process is that determination, which rests with the judicial officer, as to whether or not it is for the moral and temporal interest of the child that the adoption should be allowed. I think the opinion of that court would command respect in this country at any time, but it seems to me to have special significance as coming from a country where they have appointed a judicial officer to determine whether adoption shall or shall not take place. If it has no other meaning, it surely indicates the profound truth that in so far as the State is involved in the matter of adoption at all, it is in an executive and administrative capacity rather than in a judicial capacity . . . [col. 1714].

There is present in the mind of everybody a dread that by ill-considered legislation we may be raising up a whole storm of litigation at a later period. That is true, and a very proper consideration, but it need not lead to what I think is a *non-sequitur*, that in proportion as we now conjecture all the conceivable circumstances that may arise, we thereby lessen the risk of litigation at a later stage. Litigation may, after all, be the price which we have to pay to make our statute book square with the facts of life. . . . If you look at the legislation of the State of New York, you find that there are three definite dates which stand out above all the others, namely, 1873, when the first adoption law was passed; 1887, when it was

amended and improved; and 1924, when a large all-embracing statute brought the law up-to-date. Those are periods the first of 14 and the second of 37 years, filled with litigation. . . . And it is profoundly and progressively instructive. They started in 1873 by omitting from the rights enjoyed by the adopted children what I may somewhat loosely call the right of inheritance, and it was not until 14 years later that that right, along with many other amendments, was included . . . [col. 1716].

In that period one important case decided that the surrogate, the official charged with the adoption proceedings on behalf of the State, had no power to revoke an order of adoption. Secondly, there was a very important case in which it was decided that the consent of the parent was not necessary if he or she had lost his or her civil rights by being imprisoned. Another case decided that the legally adopted child of an employé was not his heir at law under a particular Workmen's Compensation Act. In one important case a definition was attempted of the extent of parental abandonment which must be shown before it was not necessary to have the consent of the natural parents to the act of adoption; while in another case, after a great deal of litigation, it was decided that the supreme court, in right of its equity jurisdiction, could annul an adoption which violated equitable principles. I do hope that, in stating the variety of these decisions, I have made clear that there are 101 subtle difficulties which just escape our prophetic grasp . . . [col. 1717].

12. A British Committee on Adoption

FIRST REPORT OF THE COMMITTEE ON CHILD ADOPTION (CMD. 2401;
LONDON: H. M. STATIONERY OFFICE, 1925)

As to the forms and procedure to be adopted, it appears to be the general opinion of those who have given evidence before us that some form of judicial sanction should be required. This view we accept. The transaction is one which may affect the status of the child and have far-reaching consequences and from its nature is not one in which, without judicial investigation, there is likely to be any competent independent consideration of the matter from the point of view of the welfare of the child . . . [p. 5].

Whichever be the tribunal selected it is important that the judi-

cial sanction, which will necessarily carry great weight, should be a real adjudication and should not become a mere method of registering the will of the parties respectively seeking to part with and take over the child. To avoid this result we think that in every case there should be appointed in the manner to be prescribed by the Act or rules to be made thereunder some body or person to act as guardian *ad litem* of the child with the duty of protecting the interests of the child before the tribunal . . . [p. 6].

The next matter for consideration is the rights which are to be created and the obligations which are to be imposed by the legal act of adoption. We think that adoption should operate to take from the natural parent and transfer to the adopting parent all those rights duties and liabilities in relation to guardianship custody and maintenance which the natural parent has or is under vis-a-vis the child or vis-a-vis the Poor Law or any other Public Authority including the right or duty in relation to such matters as consent to marriage during infancy, and that so far as the child is concerned he should in all similar respects stand to the adopting parent in the position which before the adoption he occupied in relation to his natural parent.

Up to this point there is not much difficulty, but acute controversy arises in relation to matters such as succession and the like. No system of adoption, seeking as it does to reproduce artificially a natural relation, can hope to produce precisely the same result or to be otherwise than in many respects illogical, and this is made apparent in the diversity of provisions in relation to succession and marriage which appear in the adoption laws of other countries.

We think that in introducing into English law a new system it would be well to proceed with a measure of caution and at any rate in the first instance not to interfere with the law of succession. The child, in English law, has no absolute right to succeed to any part of the parents' property . . . [pp. 6-7].

It is unnecessary to advert to the distinctions which have hitherto prevailed between realty and personalty in regard to succession, but it does not require any profound knowledge of the law of succession to bring home to an enquirer (1) the impracticability of putting an adopted child in precisely the same position as a natural

child in regard to succession, and (2) the grave difficulties which would arise if any alteration were to be made in the law of succession for the purpose of giving an adopted child more limited rights. We propose, therefore, that the child who is the subject of an adoption should not have his position altered in any respect in relation to succession either as regards his natural family or as regards his adopted family but that the tribunal which sanctions the adoption should have power, if it think fit, to require that some provision be made by the adopting parent for the child . . . [p. 7].

Again, with regard to marriage, we are against the introduction of artificial prohibitions. The blood tie cannot be severed; the existing prohibitions arising thereout must remain and it is repugnant to common sense to make artificial offences the result of a purely artificial relationship. The relationship of guardian and ward does not to-day preclude inter-marriage and the adopting parent will only hold the position of a special guardian. We therefore recommend that legalised adoption should have no effect in this regard at all.

There are two minor matters to which the advocates of adoption attach importance. *First*, the question of name, and *secondly*, the question of birth certificates.

In law a surname is a matter of reputation and nothing else and we do not consider that any statutory provision is necessary to enable an adopted child to be called by the surname of the adopting parent. Every legally adopted child will presumably take the surname of the adopting parent and there is nothing in law to prevent this being done. As to birth certificates, in view of the fact that children the subject matter of adoption are often illegitimate, it is said that their status in the world's eye would be improved if, when required to produce a birth certificate, they could produce a certificate of adoption which only records the date of their birth. Such a system is, we have ascertained from the Registrar-General, a feasible one if carried out on the general lines indicated in Appendix III hereto . . . [pp. 7-8].

As to the children who may be adopted, we anticipate that most adoptions will be of children of tender years, but there may be exceptional cases and we see no reason why adoption should not extend to every unmarried minor.

As to the persons capable of adopting we think it is essential that there should be a substantial difference of age between the adopter and the adopted and that this difference should be not less than twenty-one years. We also think it desirable that no one under twenty-five years of age should be qualified to adopt.

With regard to married couples, adoption should be permissible by one or other spouse or by both jointly but not by one alone without the consent of the other [p. 8].

Another matter of importance is the question whether an adoption once sanctioned is to be capable of revocation. In our opinion the notion of revocation is inconsistent with the notion of adoption. On the other hand there is no reason why an adopted child should not just as a natural child be the subject of an adoption so that a child may be transferred from a first adopting parent to a second adopting parent. Although no power of revocation is in our view desirable we think it will be well that before the final order of adoption is made there should always be a probationary period of such length, not exceeding in any case two years, as the tribunal shall fix [pp. 8-9].

A topic which has been the subject of much discussion before us is that of secrecy. . . . This notion of secrecy has its origin partly in a fear (which a legalised system of adoption should go far to dispel) that the natural parent will seek to interfere with the adopter and partly in the belief that if the eyes can be closed to facts the facts themselves will cease to exist so that it will be an advantage to an illegitimate child who has been adopted if in fact his origin cannot be traced. Apart from the question whether it is desirable or even admissible deliberately to eliminate or obscure the traces of a child's origin so that it shall be difficult or impossible thereafter for such origin to be ascertained, we think that this system of secrecy would be wholly unnecessary and objectionable in connection with a legalised system of adoption and we should deprecate any attempt to introduce it [p. 9].

13. British Law of 1926

GREAT BRITAIN, STATUTES, 1926, 16 AND 17 GEORGE V, C. 29

1.—(1) Upon an application in the prescribed manner by any person desirous of being authorised to adopt an infant who has never

been married, the Court may, subject to the provisions of this Act, make an order (in this Act referred to as "an adoption order") authorising the applicant to adopt that infant.

(2) A person so authorised to adopt the infant and an infant authorised to be adopted are in this Act referred to as an "adopter" and "an adopted child" respectively, and "infant" means a person under the age of twenty-one.

(3) Where an application for an adoption order is made by two spouses jointly, the Court may make the order authorising the two spouses jointly to adopt, but save as aforesaid no adoption order shall be made authorising more than one person to adopt an infant.

2.—(1) An adoption order shall not be made in any case where—
(a) the applicant is under the age of twenty-five years, or (b) the applicant is less than twenty-one years older than the infant in respect of whom the application is made: Provided that, where the applicant and the infant are within the prohibited degrees of consanguinity, it shall be lawful for the court, if it thinks fit, to make the order notwithstanding that the applicant is less than twenty-one years older than the infant.

(2) An adoption order shall not be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female unless the Court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody of the infant or who is liable to contribute to the support of the infant: Provided that the Court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with.

(4) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them: Pro-

vided that the Court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(5) An adoption order shall not be made in favour of any applicant who is not resident and domiciled in England or Wales or in respect of any infant who is not a British subject and so resident.

3. The Court before making an adoption order shall be satisfied—
(a) that every person whose consent is necessary under this Act and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights; and (b) that the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and (c) that the applicant has not received or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.

4. The Court in an adoption order may impose such terms and conditions as the Court may think fit and in particular may require the adopter by bond or otherwise to make for the adopted child such provision (if any) as in the opinion of the Court is just and expedient.

5.—(1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain its

parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock: Provided that, in any case where two spouses are the adopters, such spouses shall in respect of the matters aforesaid and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively.

(2) An adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition, whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adopter, and the expressions "child," "children" and "issue" where used in any disposition whether made before or after the making of an adoption order, shall not, unless the contrary intention appears, include an adopted child or children or the issue of an adopted child. . . .

9. It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the Court to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward. . . .

11.—(1) The Registrar-General shall establish and maintain at the General Register Office a register to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.

(2) Every adoption order shall contain a direction to the Registrar-General to make in the Adopted Children Register an entry recording the adoption in the form set out in the Schedule hereto.

(3) If upon any application for an adoption order there is proved to the satisfaction of the Court—(a) the date of the birth of the

infant; and (b) the identity of the infant with a child to which any entry or entries in the Registers of Births relates; the adoption order shall contain a further direction to the Registrar-General to cause such birth, entry or entries in the Registers of Birth, to be marked with the word "Adopted," and to include in the entry in the adoption register recording the adoption the date stated in the order of the adopted child's birth in the manner indicated in the Schedule hereto. . . .

12.—(1) This Act may be cited as the Adoption of Children Act, 1926.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-seven.

(3) This Act shall not apply to Scotland or Northern Ireland.

14. Rules Issued by the Lord High Chancellor, 1926¹

I, George, Viscount Cave, Lord High Chancellor of Great Britain, by virtue of section 8 of the Adoption of Children Act, 1926, and of other powers enabling me in this behalf, do hereby make the following Rules for carrying that Act into effect so far as it confers jurisdiction upon the Courts of Summary Jurisdiction. . . .

4.—(1) Upon an application being made to the court it shall be lawful for the court to appoint a guardian *ad litem* of the infant in respect of whom the application is made, and upon such appointment the duplicate of the written statement shall be given to the guardian *ad litem*.

(2) The following persons or bodies shall be made respondents, namely, the infant in respect of whom the application is made, the guardian *ad litem* of the infant, every person or body who is a parent or guardian of the infant or has the actual custody of the infant or is liable to contribute to the support of the infant, and the spouse (if any) of the applicant.

(3) As soon as the guardian *ad litem* has been appointed, the court shall fix a time for the hearing of the application and shall issue a

¹ Conveniently found in W. Clarke Hall and Justin Clarke Hall, *The Law of Adoption and Guardianship of Infants with Special Reference to Courts of Summary Jurisdiction together with the Legitimacy Act, 1926* (London: Butterworth & Co., 1928), pp. 50-55.

notice in the Form No. 3 in the Schedule hereto addressed to the respondents and shall direct the applicant to cause such notice to be served on each of them: provided that where the infant is in the actual custody of any person such notice need not be served on the infant, but may require such person to produce the infant to the court.

(4) Any notice under these Rules shall be served upon any respondent to whom it is addressed either by delivering a copy to him personally or by leaving a copy with some person for him at his last or usual place of abode or by sending a copy by registered post to him at his last or usual place of abode, whether such place of abode is in England or elsewhere: provided that where the respondent is a body the copy shall be sent to the registered office of that body, or if there is no registered office, to the place where the body transacts or carries on its business. . . .

5. Where a local authority or other body of persons is appointed guardian *ad litem*, or where the consent of such a body to the making of an adoption order is necessary under the Act, such body may act, or consent may be given on its behalf, by any officer or agent of that body. . . .

6.—(1) It shall be the duty of the guardian *ad litem* to investigate as fully as possible all the circumstances of the infant and the applicant, and all other matters relevant^a to the proposed adoption, with a view to safeguarding the interests of the infant before the court, and in particular it shall be his duty to include in his investigation the following questions:—

- (a) Whether the written statement is true and complete, particularly as regards the date of birth and the identity of the infant;
- (b) Whether any payment or other reward in consideration of the

^a *Other Matters Relevant.*—Beyond those mentioned might be:—(1) means of education to be provided; (2) the companionship the child would enjoy; (3) the healthiness or otherwise of the proposed home and surroundings; (4) the religious facilities available; (5) the profession, business, or employment suggested for the child; (6) the compatibility of temperament, ambitions, tastes, etc.; (7) the provision for games, exercise, etc., e.g., if brought up amongst the poorer classes, would the child join the Boy Scouts or Girl Guides?

adoption has been received or agreed upon and whether it is consistent with the welfare of the infant;^b

- (c) Whether the means and status of the applicant are such as to enable him to maintain and bring up the infant suitably, and what right to or interest in property the infant has;
- (d) What insurance, if any, has been effected on the life of the infant;
- (e) Whether it is desirable for the welfare of the infant that the court should be asked to make an interim order or, in making an adoption order, to impose any particular terms or conditions or to require the adopter to make any particular provision for the infant.

(2) The guardian *ad litem* and, where a body is appointed, any officer or agent of that body shall regard all information obtained by him in the course of his investigation as confidential, and shall not divulge any part of it to any other person except so far as may be necessary for the proper execution of his duty.

15. Ten Years' Experience with the Adoption Law of 1926

REPORT OF THE DEPARTMENTAL COMMITTEE ON ADOPTION SOCIETIES AND AGENCIES. PRESENTED BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT TO PARLIAMENT BY COMMAND OF HIS MAJESTY, JUNE, 1937 (CMD. 5499; LONDON: H. M. STATIONERY OFFICE, 1937)

There can thus be no doubt of the social importance of adoption. More than five thousand children^c were the subject of adoption orders in 1936. It is difficult to estimate the extent of *de facto* adoption, but it must also be large. Through inertia or ignorance many

^b *Welfare of the Infant*.—"The duty of the Court," said Lindley, L.J., in *In re McGrath* (1893) 1 Ch. 143, "is in our judgment to leave the child alone unless the Court is satisfied that it is for the welfare of the infant that some other course should be taken. The dominant matter for consideration is the welfare of the child, but the welfare of the child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well being, nor can the ties of affection be disregarded."

It is to be noticed that the welfare of the infant is the *paramount consideration* and not the sole consideration (see on this point, *Re Thain, Thain v. Taylor* [1926] Ch. C.A. 676; and *W. v. W.*, [1926] P.111).

^c [The first year after the passage of the law the number was 2,943. In every year except 1931, the number was larger than in the previous year—EDITOR.]

adopters do not apply for an adoption order, or delay applying until there is some special reason to do so, such as the desirability of obtaining a birth certificate which does not disclose illegitimacy [p. 4].

What is the extent of the activities of the adoption societies and other adoption agencies? The information which we have collected on this subject from adoption societies and agencies, from selected courts, from local authorities and other sources, shows that it is large. . . . In 500 consecutive cases in the Metropolitan Juvenile Courts, adoption societies acted as intermediaries in 100, other agents in 23. . . . Information supplied by other courts supports the conclusion that adoption societies and agents are instrumental in arranging a large proportion of legal adoptions. From figures furnished by the adoption societies themselves, it appears that there are four societies which are responsible between them for more than 1,000 cases a year and four others average more than 40 adoptions a year each, with a combined total of about 200 a year. In addition, as will be shown below, a considerable number of voluntary societies, local authorities and private persons arrange adoptions, but not on any large scale [p. 6].

The adoption societies and agencies may conveniently be divided into four categories:—(i) organisations which exist solely for the purpose of arranging adoptions and those which include the arrangement of adoptions as part of their regular work; (ii) voluntary homes and other organisations which, without including adoption as a part of their regular work, occasionally arrange adoptions; (iii) local authorities; (iv) private persons [p. 7].

It appears to us beyond question that the first duty of the adoption society is to the child. The child's future is at stake, and the society should take every reasonable step to satisfy itself as to the suitability of the prospective adopters on all grounds before the child is handed over. . . .

An adoption society should therefore make full inquiries not only into the economic and social circumstances of applicants for children, but also into their suitability on other grounds to receive the care of a child [p. 10].

All these stages, the submission of a form of application, the

taking up of references, a personal interview, a home visit, and a period of probation during which a further visit is made to the home, appear to us essential, and we have been disturbed to find that on their own admission some of the societies which ordinarily make all these inquiries dispense in "special circumstances" with one or more of the requirements, sometimes with the interview, sometimes with the home visit. The consequences of a mistake may be so grave that we consider that in no circumstances should any of them be waived.

It is obvious that these inquiries should be more than mere formalities, and our only other doubt in connection with the societies which make all of them is whether in practice they are always sufficiently thorough or whether the persons who carry them out possess the qualifications to perform what should be a very thorough social investigation. Thus none of the chief adoption societies appear to possess on its staff trained social workers . . . [p. 11].

We give below a selection of the worst, involving several different societies . . . [p. 12].

A girl was placed with a couple at Norwich in 1935 without inquiries into the home. The marital relationship was unhappy. The husband neglected to maintain the wife, who began to stay away from home at night, leaving the child with neighbours. Finally, after her husband had assaulted her, the wife left him and the child. . . .

A girl of 3½ was adopted by a blind man and his wife. The man was aged 50 and was in receipt of a pension of 10s. a week, which he augmented by hawking and by letting off rooms in the house. The woman died in 1934. The girl, now in her fifteenth year, continued to sleep in the same room as her adoptive father. In December, 1934, one of the sub-tenants in the house, a street musician, was convicted of attempted carnal knowledge of the girl. . . .

A girl of three, who had been adopted by a labourer and his wife, was found to be ill-treated. The adoption society removed her and its secretary admitted in evidence that she should never have been placed with the adopters. Yet the same society had previously placed three other children in this home, all of which had been taken back by the society. . . .

A child was placed with a couple who were dependent on unemployment benefit and poor law relief. Two months after the adoption the husband was admitted to the local mental hospital suffering from general paralysis of the insane . . . [pp. 12-13].

Most of the adoption societies insist on a medical examination. In the case of one important society this includes a Wassermann test as a matter of routine. . . . But it was disturbing to receive an admission from the representatives of a fourth that a medical certificate is dispensed with in about one case in ten, and the fitness of the child is judged on sight by the officials of the society, and to find that the "medical report" of this society and another could be filled in by the mother herself. This society's representatives did not deny that they had in some cases taken at a single interview the babies of girls who after their confinement in public assistance hospitals had obtained a half day's leave of absence with a view to getting rid of their children, and that the society had not communicated with the authorities of the hospitals. . . . The practice of this society is in marked contrast with that of another, which informed us that it refuses many babies for reasons including bad health, mental defect in the mother, dubious parentage, and lack of information concerning the father. . . .

All the adoption societies arrange for a probationary period, which appears to vary in length from one to six months. Most of the societies, however, regard it primarily as an opportunity for the adopters to assure themselves that the child is suitable, and if the adopters wish it the period of probation is often curtailed . . . [p. 15].

Too much responsibility should not be left with the officials, and different points of view and different types of experience should be available. We consider, therefore, that there should be a Case Committee, whose sanction should be required before final approval is given to any adoption. . . . It should be competent both to advise the officials and to bring to their assistance wider and different points of view . . . [pp. 16-17].

The adoption societies appear to derive their incomes from the following main sources: (1) contributions from the charitable public, including income from endowments; (2) payments by mothers; (3) payments by putative fathers; (4) payments by adopters . . . [p. 22].

One society informed us that it was formerly its practice to ask mothers to pay 10s. weekly for three months after adoption and afterwards an annual fee for inspection of £1. Another stated that

the mother was formerly asked to pay 10s. weekly in respect of maintenance until the child was handed over to adopters, and thereafter any arrears of maintenance payments, plus weekly payments up to a total amount of £60 or 5s. a week for two years. The reason given for these amounts was that they were required to cover out of pocket and overhead expenses in connection with the adoption and the cost of supervision until the age of 16 years. There was in fact little or no supervision by the society . . . [pp. 23-24].

The total charge of £60 was stated to represent the average all-in cost of an adoption . . . [p. 24].

Private agents.—We are glad to be able to state that the evidence which we have received gives no support for the view that there is a widespread traffic in children or that “baby-farming” is prevalent. We have, however, been informed of a number of adoptions in which nursing homes or private persons have acted as intermediaries, and some of these cases give very serious cause for concern . . . [p. 35].

Mrs. A. also answered advertisements by would-be adopters and advertisements offering children for adoption, and arranged adoptions of children placed with her as a foster-parent. Often large sums of money were paid to her, and she appears in fact to have made a business of arranging adoptions.

In one case she is said to have received £40 or £50 from the mother, but told the adopters that the mother could not pay anything . . . [p. 37].

A man who applied for unemployment assistance was found to have legally adopted in 1934 two children which he had obtained from a nursing home run by a Miss B. On each occasion he had been paid £30 . . . [p. 38].

In another case a sum of £550 was asked for, and £150 was paid for a child . . . [p. 39].

Local authorities.—Local authorities frequently receive applications from would-be adopters, and many authorities are prepared in suitable cases to consent to the adoption of children maintained by them under the Poor Law Act . . . [p. 40].

The procedure of the London County Council, which seems to us admirable, is as follows. Applicants, who are supplied with a leaflet

explaining the Council's procedure and the effect of legal adoption, are first required to fill in a form of application giving full particulars as to age, home circumstances (including rent and accommodation), income, religious persuasion, and the names of two referees, one of them preferably a minister of religion or a medical practitioner. . . .

If the applicants are *prima facie* suitable they are interviewed by two officials of the Education Department, one of whom is a woman, and if they are approved at the interview, arrangements are made for one of the Council's Boarding-Out Inspectors to visit the home, and the references are taken up. . . .

Approved applicants then visit one of the Council's Homes where they are shown children which are regarded as eligible for adoption, and they make their choice. A thorough medical examination, including a Wassermann test, is made of the child, and its social history is investigated. The Council will not consent to an adoption unless it is satisfied that the child is physically and mentally fit for adoption, nor where the social history is bad, with, for example, a record of mental defect or crime. Particulars of the child's physical and mental condition and social history are supplied to the adopters. If the inquiries as to the suitability of the child prove satisfactory, and the adoption is approved by the Special Services Sub-Committee of the Education Committee, the child is handed over to the adopters for a probationary period, usually three to six months. During this period there are one or two further visits by the Boarding-Out Inspector, but the main object of the period of probation is to enable the adopters to satisfy themselves that the adoption is likely to be successful . . . [p. 41].

The power of arranging adoptions under the Poor Law Act seems to us valuable, and we commend it to the notice of local authorities which do not at present make use of it. We think that the competition of the local authorities should have a beneficial effect on the work of the other adoption agencies. But we are not in favour of restricting the arrangement of adoptions to public authorities, for we think that many suitable applicants would be reluctant to apply to a Government department or a local authority, and we consider

that it is desirable that there should be alternative agencies available [p. 43].

We do not think that it is necessary to regulate the arrangement by local authorities of adoption under section 52 (7) of the Poor Law Act, 1930, or otherwise.

As regards the other agencies, the proposal which has received most support from witnesses, including the representatives of the principal adoption societies, has been some form of licensing or registration¹ by a public authority.

Licensing seems to us the most practicable method of regulation [p. 45].

We attach great importance to the conditions of the license. It would be impossible even if it were desirable for the licensing authorities to inspect the homes of all adopters with whom children were placed by adoption agencies, and we think that the only effective way of supervising them is by laying down in the licence the methods to be followed and giving the licensing authorities the power to inspect books and records to ensure that the conditions are observed. . . .

We prefer regulation by the Secretary of State to prescription in a statute, because the conditions will be mainly concerned with matters of detail, and are bound at first to be tentative. It should, therefore, be possible without too much difficulty to modify them in the light of experience [p. 47].

¹ [Following this recommendation, Parliament in 1939 enacted an Adoption of Children (Regulation) Act, 2 and 3 George VI, c. 27, which provides for the registration of adoption societies. The act also restricts the making of arrangements for adoption to the registered adoption societies and the local authorities. The law further designates the county councils and county borough councils as the registration authorities. An adoption society may be refused registration for certain specified reasons, and registration, if permitted, may later be canceled for specified reasons.

The law affords additional protection to the adopting parents as well as to the adopted child; and also regulates the so-called *de facto* adoptions of children who, although not legally adopted, are sometimes called "adopted."—EDITOR.]

SECTION IV

MOTHERS' AID

INTRODUCTION

The substitution of workmen's compensation for the uncertainties of employers' liability under the common law and of "mothers' pensions," or, more accurately, public aid for dependent children in their own homes, for the uncertainties and inadequacies of relief under the poor law or care by charitable agencies were the first social-insurance measures to be adopted in the United States. Both were enacted in 1910-11¹ and were rapidly adopted in the Northern states. Illinois led with its "Funds to Parents" Act (p. 248).² In two years twenty states, in ten years forty states, and by 1935 all the states³ except Georgia and South Carolina had passed some kind of mothers' aid laws.

Their enactment constituted public recognition by the states that the contribution of the unskilled or semiskilled mothers in their own homes exceeded their earnings outside of the home and that it was in the public interest to conserve their child-caring functions; and as this group of children whose fathers were dead, incapacitated, or had deserted them would need care for a long period, the states recognized that the aid should not be administered in connection with or as part of general relief and must have a different standard of adequacy than emergency relief. This legislation also represented a revolt against the current policy of separating children from their mothers on the ground of poverty alone and caring for them at greater cost in institutions and foster-homes. The decisions of the

¹ A few earlier attempts at workmen's compensation had been made, but the New York law of 1910, although held unconstitutional, marked the first milestone. Ten other states (California, Illinois, Kansas, Massachusetts, Nevada, New Hampshire, New Jersey, Ohio, Washington, and Wisconsin) followed with workmen's compensation laws in 1911.

² The state of New Jersey had begun to use its funds for foster-home care for the care of children by their mothers in 1910 (p. 257). In Missouri in 1911 the legislature (General Assembly) authorized Jackson County (Kansas City) to provide mothers' pensions.

³ Also the District of Columbia, Alaska, Hawaii, and Puerto Rico.

courts regarding the early laws make it clear that they were child welfare measures and not new poor relief laws (p. 286).

The storm of controversy that developed among social workers with the passage of the Illinois Act showed how out of line many of them were with current public opinion and how little they appreciated the needs of mothers who were not cared for or were very inadequately cared for by the private charities they administered. The Illinois law was proposed by Judge Merritt W. Pinckney of the Cook County Juvenile Court because he found himself continually asked to take children from poor but competent mothers and commit them to institutions. Public relief in Cook County was at that time limited to grocery and coal orders which the United Charities and other private agencies often supplemented by money for rent, clothes, and types of food not supplied by the County. But such assistance was generally regarded as emergency aid. Usually work was secured for the mother, and sometimes she was persuaded to give up one or two children when it was obvious that she could not hope even with some assistance combined with her meager earnings to care for all her children. At the White House Conference on Dependent Children which President Theodore Roosevelt called in 1909, the first resolution adopted laid great stress on the importance of providing means for keeping children in their own homes, but, reflecting a public opinion which was already in process of change, added that such assistance should be given, "preferably in the form of private charity, rather than public relief."¹ While the charitable agencies usually had some money for pensions for such mothers, very few of them, in Chicago or elsewhere, were given any real security. Indeed, security was not generally considered desirable as it was thought to discourage relatives and friends from giving assistance to the families. Such a program or policy meant all too often that at the end of a period of years the mother broke down under the double burden of wage-earner and housekeeper, and the children were first neglected and then delinquent.²

¹ The Conclusions of the Conference are reprinted in U.S. Children's Bureau Publication No. 136, pp. 195-200 and in *Dependent and Neglected Children* (White House Conference on Child Health and Protection, IV, C-I [New York: D. Appleton-Century Co., 1933]), p. 59.

² Helen R. Wright, *Children of Wage-Earning Mothers: A Study of a Selected Group in Chicago* (U. S. Children's Bureau Publication No. 102; Washington, D.C., 1922).

Judge Pinckney was in charge of a publicly supported agency and he properly sought public funds to remedy a need of which he was an almost daily witness. This need the legislators understood because they knew the problems that the widows of workingmen faced, and so, with no estimate of numbers or costs and no discussion of the administrative problems involved, they passed the Funds to Parents Act. Judge Pinckney did not consult the interested social agencies before proposing the law, and it lacked administrative safeguards. But Chicago social workers had great confidence in him and in his objectives, and so the emergency need for an administrative staff was met by the organization of a committee composed of representatives of the leading private social agencies of the city, which undertook to help Judge Pinckney test the value of the law by providing temporarily out of private-agency funds a mothers' pension staff just as they had provided the original probation staff of the court. Their action was much criticized by some leaders in social work on the ground that the whole theory of the law was wrong and it had better be allowed to fail at once.

At that time the opinion was widespread that public relief would never be well administered because of the traditional theory that adequate salaries would not be provided for administration, that there would be political interference, that relief from the public treasury would increase pauperism, and that private charity could and would meet the need if it did not have to compete with public relief. Public relief had been abolished in a number of cities, among them New York, Philadelphia, and Baltimore some thirty years before the mothers' aid movement started, and it was from these centers that criticism by social workers, especially those connected with charity organization societies, was most vehement. Moreover, the statement of the existing need was regarded as a criticism of the adequacy of these agencies, and it was true that among the supporters of mothers' pensions there were some who were critical of the charity organization policies as the reports of the commissions appointed in New York and Massachusetts revealed (p. 249).

The use of the word "pension," greatly preferred by the mothers, was called entirely unwarranted by the opponents. Edward T. Devine, at that time director of the New York School of Social Work

and at one time secretary of the Charity Organization Society of New York City, said:

I sharply challenge the proposal for weekly or monthly payments to mothers from public funds raised by taxation, as not in harmony with the principles of social insurance; as not being insurance at all, but merely a revamped and in the long run unworkable form of public outdoor relief; as having no claim to the name of pension and no place in a rational scheme of social legislation; as embodying no element of prevention or radical cure for any recognized social evil; as an insidious attack upon the family, inimical to the welfare of children and injurious to the character of parents . . . as illustrating all that is most objectionable in state Socialism, and failing to represent that ideal of social justice which the Socialist movement, whatever its faults, is constantly bringing nearer. . . .¹

Mr. Devine also pointed out the enormous cost of such a program, estimating that in New York City it might eventually run to a million dollars a year.² That it has reached \$1,000,000 a month in that city shows how inadequate his estimate of the need was.

At the National Conference of Social Work which met in Cleveland in 1912 the subject was discussed in an atmosphere charged with feeling. Mary Richmond declared:

So far from being a forward step, "funds to parents" is a backward one—public funds not to widows only, mark you, but to private families, funds to the families of those who have deserted and are going to desert! . . .

No private fund for relief can successfully compete very long with a public fund, whether the latter is adequate or not. Inevitably the sources of private charitable relief dry up.³

Frederic Almy, secretary of the Buffalo Charity Organization Society, gave great weight to the theory "that to the imagination of the poor the public treasury is inexhaustible and their right, and that they drop upon it without thrift, as they dare not do on private charity." However, he was not opposed to making an experiment with this type of public assistance.

Times change [he said] and I am not willing to believe that in this day public outdoor relief cannot be successful. It weighs with me that the equally delicate

¹ Edward T. Devine, "Pensions for Mothers," *American Labor Legislation Review*, III (1913), 193.

² Quoted by Frederic Almy, "Public Pensions to Widows: Experiences and Observations Which Lead Me to Oppose Such a Law," *Proceedings of the National Conference of Social Work, Cleveland, 1912*, p. 484.

³ *Ibid.*, p. 492.

work of child placing is successfully done by public charity, though the arguments against it would be similar.¹

Homer Folks, secretary of the New York State Charities Aid Association, took a different position. He said that while there was a subtle psychological but very important difference between the feeling of reliance upon private relief and the feeling of reliance upon public charity claimed as a matter of right, I am not so sure, in the case of widows, that it is not a matter of right after all. A feeling of reliance upon a steady and regular income wisely adapted to the family needs and the family budget, ought to be a good thing. . . . If it develops that sufficient private resources are not to be had, is the evil of breaking up families as we are now doing, a lesser evil than public relief to widows? A good many say yes. My opinion is distinctly not; and that if we do not secure from private sources sufficient funds, then, without hesitation we ought to have a system of public relief for widows.²

Julia C. Lathrop, at that time the chief of the United States Children's Bureau, believed that public agencies could and must be made to function effectively if social needs were ever to be met. Taking part in the Cleveland discussion, Miss Lathrop asked the Conference:

Are we not taking all this in too elderly a fashion? We act as though we were in the afternoon of time, and our methods of progress almost finished, when in fact we are in the gray dawn of time as to our expression of public responsibility for the care of the young of the state. We are frightened in that gray dawn by the spooks and bogies of the old English poor-law, and we are scarcely awake enough to remember the Poor-Law Commission of 1909 and its minority report.³

C. C. Carstens, at that time secretary of the Massachusetts Society for the Prevention of Cruelty to Children and later director of the Child Welfare League of America, made an investigation in 1912 for the Russell Sage Foundation of the administration of "Public Pensions to Widows with Children" in several American cities.⁴

Mr. Carstens took the position now generally accepted that administration of these laws by the juvenile courts was inadvisable, and noted that when Judge Baker of the Boston Juvenile Court said at the Cleveland Conference, "I want to warn the communities that are going to try any experiments with widows' pensions or relief to parents not to administer them through the juvenile courts," Judge Pinckney added: "When Judge Baker says that the ad-

¹ *Ibid.*, p. 485.

² *Ibid.*, pp. 486-87.

³ *Ibid.*, p. 488.

⁴ *Public Pensions to Widows with Children: A Study of Their Administration in Several American Cities* (New York: Russell Sage Foundation, 1913).

ministration of this relief ought not to be left to the Juvenile Court of Chicago, or to any juvenile court, I say, Amen! Amen!"¹

Mr. Carstens held the then orthodox theory that as a means of preventing pauperism every dollar possible should be secured from relatives, churches, employers, friends, and societies before relief was given, and thought he saw in a single year of mothers' aid a decline in this type of interest and help.

His criticism of some of the case work under these newly launched schemes was doubtless justified, but some of his warnings seem now to come from the dead past. For example, he was alarmed at the amount of the grants and pointed out that "where an average of \$23.28 per month is provided for each family, temptations come to spend money recklessly or foolishly, even in some of the better families."² However, he reported that "the enthusiasm in favor of widows' pensions must not be underestimated and undervalued. It is born of a desire to have justice done to the mother who is attempting to keep her brood of children together under trying circumstances."³

The critics were eventually silenced by the success and popularity of mothers' aid, but some still held to the theory of non-categorical relief⁴ and to their distrust of any form of public aid. The depression finally convinced them of the necessity for public relief, but only after private charity had tried unsuccessfully to meet the mounting needs of millions of unemployed did they abandon the theory that private charity if not forced to compete with public provision could carry the entire relief load.

Perhaps because the theory of the mothers' aid scheme was so challenged, leaders in Illinois agreed too readily that the Funds to Parents Act was too inclusive. When fear was expressed as to the social effects of aid for deserted families and unmarried mothers, they agreed that it might be wise to restrict the coverage of the new scheme. In most of the early state laws, aid was given only to the

¹ *Ibid.*, p. 26. See also the *Proceedings of the National Conference of Social Work, Cleveland, 1912*, pp. 493 and 497.

² Carstens, *op. cit.*, p. 17.

³ *Ibid.*, p. 27.

⁴ On this subject see "Categories," *Social Service Review*, XI (June, 1937), 288-89. [See also E. Abbott, *Public Assistance*, p. 511.]

children of widows and to those whose fathers were unable to support them because of physical or mental disease. Later social workers agreed this form of assistance should also be made available to children whose fathers were divorced, were in prison, were incapacitated, or who had deserted them, or had never been married to their mothers. By 1934 the mothers' aid laws in only ten states¹ and the District of Columbia included all the foregoing categories, while all the state laws included the children of widowed mothers. A general provision, such as that found in the District of Columbia law (p. 254), permitting the mother or guardian if not able to provide proper care for a child in his own home to apply for a mothers' pension, was later recognized as preferable to a detailed statement as to what must be the status of the father before aid could be granted.

The first mothers' assistance laws were passed when it was generally accepted that the smallest local unit of government should pay for all the social services needed in these units. Usually the counties were either required or permitted to set up the system, as the laws adopted were mandatory or permissive in character. At the time they were passed the phrase "public welfare" was not in use, and poor relief was generally administered by elected officials or their untrained appointees while the juvenile court represented the modern idea of care for children and in most states had authority to remove dependent children from their homes and commit them to the care of institutions, agencies, or individuals. While Judge Pinckney had said that if any other public agency were available the administration of mothers' aid did not belong in the juvenile court, in twenty states it was placed there with the general approval of those interested in dependent children because no other local administrative agency seemed at the time as well qualified. While two of the states adopting the court as the administrative agency were in the East² and four in the South,³ the great majority were in the

¹ *Social Security in America: The Factual Background of the Social Security Act* (Washington, D.C.: U.S. Government Printing Office, 1937), pp. 235-36. Published for the Committee on Economic Security by the Social Security Board.

² New Jersey and Vermont.

³ Arkansas, Louisiana, Oklahoma, and Tennessee.

Middle West and Northwest.¹ In twelve states² the poor-law officials were given administration of mothers' aid; in New York, Pennsylvania, and Rhode Island, special county boards with no other functions were created to administer the laws; while in other states³ county or city boards having other functions were the agencies chosen.

By 1934, fourteen states⁴ were paying a part, sometimes a very small part, of the cost of mothers' aid out of state funds. In that year the estimated total expenditures for mothers' aid was \$37,487,-479, of which \$31,621,957 was paid from local tax funds and \$5,865,-522 from state funds.⁵ In Arizona and New Hampshire the state paid the entire bill, while in nine states⁶ approximately half of the costs were borne by the state.

Until after the passage of the Social Security Act, state mothers' aid laws were usually permissive rather than mandatory on the local units, which meant that many of the counties never made any mothers' aid grants. In 1931 the United States Children's Bureau reported that out of 2,723 administrative units authorized by state laws to grant mothers' aid, 1,578 reported that mothers' aid was being granted.⁷

¹ Colorado, Idaho, Illinois, Iowa, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Washington, and Wisconsin.

² California, Florida, Kansas, Maryland, Massachusetts, Missouri, Nevada, New Mexico, Texas, Utah, West Virginia, and Wyoming.

³ E.g., Arizona, Indiana, Kentucky, Maine, North Carolina, and Virginia.

⁴ Arizona, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, and Wisconsin (*Social Security in America: The Factual Background of the Social Security Act*, p. 245).

⁵ *Ibid.*

⁶ These were California, where the state paid \$1,909,747 out of a total of \$2,133,999; Delaware, \$46,500 out of \$93,000; Maine, \$155,000 out of \$310,000; Massachusetts, \$1,050,000 out of \$2,450,000; North Carolina, \$29,353 out of \$58,706; Pennsylvania, \$1,598,820 out of \$3,197,640; Rhode Island, \$133,626 out of a total of \$267,252; Vermont, \$23,488 out of \$46,976; and Virginia, \$16,938 out of \$33,876 (*ibid.*).

⁷ *Mothers' Aid, 1931* (U.S. Children's Bureau Publication No. 220), p. 8. While the trend before the depression was toward an extension of the number of counties giving aid, reports to the United States Children's Bureau showed that between 1931 and 1933, 90 counties in 12 states which had previously granted mothers' aid had canceled all grants, while 21 counties in 9 states were paying grants in 1933 though they had not done so in 1931, making a net loss of 69 counties during that period. See Grace Abbott, "Recent Trends in Mothers' Aid," *Social Service Review*, VIII (1934), 208-10. As the depression deepened, this contratrend continued until the Social Security Act was passed.

Before 1936 state reports of the numbers receiving the benefits of mothers' aid legislation were not currently available as they now are for states receiving grants for aid to dependent children under the Social Security Act. By questionnaire studies the facts as to the numbers receiving aid were assembled by the United States Children's Bureau in 1921, 1923, and 1931.¹ These reports showed 45,825 families receiving aid in 1921 and 93,620 in 1931. This increase was due primarily to the fact that a larger number of counties were granting this form of aid rather than to the enactment of new state laws. In the more than 93,000 families receiving mothers' aid in 1931 there were 253,298 dependent children. As reports were not received from some 242 counties in 17 states, it was assumed that by 1931 the number of children under care was approaching 300,000. Because of waiting lists, counties not granting aid, and similar reasons, the Children's Bureau estimated that probably twice that number were eligible for aid in 1931.

After federal and state aid for relief became available in 1933, large numbers of families eligible for mothers' aid were transferred to emergency relief rolls because the county usually paid only a fraction of the cost of relief and in most states all of mothers' aid. The reports of the state emergency relief commissions² which attempted to segregate this group indicate either that the Children's Bureau's estimate was a very conservative one or that the number of such dependent children greatly increased as the depression spread. It will be recalled that when federal aid for relief was withdrawn the mothers' aid families who remained on relief had to be cared for from local funds. Delay in the acceptance of federal aid has meant that in most of the states which have not qualified for aid to dependent children under the Social Security Act, large numbers of families entitled to mothers' aid are receiving direct relief or are employed by W.P.A. A report issued by the W.P.A. on August 11, 1936, and reported in the *New York Times* of August 12, of a census taken on May 15 of heads of families, male and female,

¹ *Public Aid to Mothers with Dependent Children* (U.S. Children's Bureau Publication No. 162; Washington, D.C., 1928); *Mothers' Aid, 1931* (U.S. Children's Bureau Publication No. 220; Washington, D.C., 1933). The results of the 1923 questionnaire were not published in full.

² E.g., in September, 1935, according to the Illinois Emergency Relief Commission, there were on its relief rolls 28,638 children under sixteen years of age eligible for aid to dependent children. (Mimeographed report dated December 17, 1935.)

eligible for employment under the W.P.A. program revealed that 410,495, or 16 per cent of the heads of families were women. While it cannot be concluded that all these 410,495 families were eligible for mothers' aid, undoubtedly a very large percentage were eligible for this grant.

To give work relief outside their own homes to mothers of young children was a mistake. W.P.A. paid women to take care of other women's children; it would have been much more useful to pay them to take care of their own children.

For successful administration of mothers' aid laws it is necessary to establish by investigation the need of the mother and her moral and physical fitness to maintain the home, as well as the legal requirements as to citizenship and residence to determine eligibility for this form of assistance. After the pension is granted it is necessary to make sure that the children are kept in school and are well cared for, and to assist in making available to the individual mothers the resources of the community for recreation, vocational guidance, and health services and in meeting emergency problems which develop. In many counties the need of a professional staff had not been appreciated. As a result the funds provided were often not adequate because the principle of budgeting needs and resources was not understood or because grants were made to families not eligible under the law, through political or personal favoritism or ignorance of the facts.¹ In many places, however, the administrative standards were in general the same as the local private agencies, and the money paid at regular periods—the principal need of these families—was much more adequate than it had been.

Since in theory mothers' aid should be based on need determined on a budgetary basis, a maximum grant should not be specified in the state laws. In 1934, twelve state laws² did not specify maximum grants either per child or per family, but all the others did.

¹ Edith Abbott and S. P. Breckinridge, *The Administration of the Aid-to-Mothers Law in Illinois* (U.S. Children's Bureau Publication No. 82; Washington, D.C., 1921).

² Arizona, Colorado, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Jersey, New York, Rhode Island, Virginia, Wisconsin, and the District of Columbia and Hawaii had laws of this type. The New York law provided that in no case was the grant to exceed the cost of the care of a child in any institution, but as institution costs usually run much higher than family care, this did not operate as a restriction (*Social Security in America: The Factual Background of the Social Security Act*, pp. 235-36).

Included in this group in which the amount of the grant was determined by individual need are some states which have made the highest average monthly grants and others whose grants have always been very low. On the other hand, in some of the states in which a maximum was specified reasonably adequate care for most of the children should have been possible. Thus in Connecticut the maximum fixed by the law for a mother with three children was \$69.33, in Indiana \$67.50, in Michigan \$60.67, in Ohio \$55.00. When the average monthly grants have been far below the legal standards in these states, inadequate appropriations or administration or perhaps both must be the explanation. In a few states the legal maximum grant was so low as to defeat the purpose of the act. For example, before 1935 the monthly grant for three children could not exceed \$20 in Arkansas, Idaho, and Oklahoma.¹

While relief in general is theoretically at least temporary in character and therefore it is not necessary to consider the complete and long-view needs of the families, mothers' aid must provide for the care of children until they are equipped to go to work. The public, unwilling to care adequately for families in which the father is able to work, can be persuaded to view the fatherless families in a different light, and where the problem has been properly presented these families have been much more adequately provided for than other needy persons. That the allowance should be adequate enough to allow the mother to stay at home and care for her children has, however, been a theory often violated in practice.

The grants paid under the state laws varied greatly. In 1931 South Dakota with an average monthly grant per family of \$21.78 was the median state, while the highest average monthly grants were found in Massachusetts (\$69.31), Rhode Island (\$55.09), New York (\$52.62), and Connecticut (\$45.91). In some states the average that year was so low² that it is clear that the whole purpose of

¹ *Ibid.* These laws have been recently amended. Arkansas in its act of 1937, creating a Department of Public Welfare, provided that assistance grants—including those for dependent children—"shall be sufficient, when added to all other income and support available to the recipient, to provide such person with a reasonable subsistence compatible with decency and health." While Oklahoma and Idaho adopted the federal maximum of \$18 for the first child and \$12 for each additional child.

² Some examples of low average grants were Arkansas \$4.33, Oklahoma \$7.29, Florida \$10.01, and Louisiana \$10.06.

mothers' aid was ignored and defeated. There were great differences in the standards in the same state also. In Illinois in 1933, for example, in 21 of the 102 counties of the state the average monthly grant per family was less than \$10 a month and in 76 less than \$20 a month. In Ohio 35 out of 88 counties were paying an average grant of less than \$10 a month and 73 less than \$20 a month, while in New Jersey and Pennsylvania no county paid an average of less than \$20 a family, and only in two counties in New York was the average monthly grant as low as \$20.¹

In general, the depression affected adversely the size of the mothers' aid grants, but a canvass of twenty states from all parts of the country showed that the average grant for mothers' aid was higher than relief grants even after federal funds were paying most of the relief costs and relief grants had greatly increased in many states in consequence.²

The enactment of the Social Security Act in 1935 began a new era in the history of mothers' aid, now more accurately called aid to dependent children. The original Wagner-Lewis bill, introduced with the approval of the administration, provided for allotments to the states amounting to one-third of the state and local expenditures for mothers' aid.³ It did not fix a maximum amount per child on the basis of which the federal government would make its grants. Under this bill one of the conditions on which a state plan was to be approved by the Board was that it must furnish "assistance at least great enough to provide, when added to the income of the family, a reasonable subsistence compatible with decency and health."⁴

The bill was greatly amended before passage, and the condition that the assistance given must provide "reasonable subsistence compatible with decency and health" was stricken out as was the same clause of the original bill in Title I providing for old age assistance. There was much objection to federal determination of adequacy on the part of Southern members who feared Northern standards would be forced on the South in providing for Negro and white tenant families.

¹ See Grace Abbott, "Recent Trends in Mothers' Aid," *op. cit.*, pp. 197-99.

² *Ibid.*, p. 203.

³ S. 1130, 74th Cong. 1st sess., sec. 206. [However, a 1939 amendment increased the grant-in-aid from one-third to one-half. See below, p. 242, n. 1.]

⁴ *Ibid.*, sec. 204 (c).

As enacted, Title IV of the Social Security Act (p. 309) in its definition of a dependent child provides a broader coverage than most of the state mothers' aid laws passed before 1935. Undoubtedly the tendency will be for the states in future amendments of their laws to accept the federal definition, although this is not made a condition for the receipt of federal aid for dependent children. The Social Security Act provides that under specified conditions the federal government will assist the states in the care of children who come within this definition. If a state law is less inclusive, federal grants will be made for fewer children. One of the conditions which a state must meet before its plan can be approved by the Social Security Board is that it must provide "such methods of administration . . . as are found by the Board to be necessary for the efficient operation of the plan," but the Board is specifically prohibited from inquiring into "selection, tenure of office, and compensation of personnel." Obviously, the question of the qualifications of the staff is fundamental to efficient administration, and the Assistance Bureau of the Board is exerting its influence, if not its authority, in favor of trained and adequately compensated personnel and the merit principle in their selection.¹

The amount of the federal grant under the law as passed in 1935 cannot exceed \$6.00 for the first child in an eligible family and \$4.00 for each additional child. This is the maximum basis of reimbursement by the federal government, but not the maximum a state or county may grant. It is, of course, unfortunate that so small a federal grant is made for dependent children. Title I, section 3(a) of the Security Act provides for each aged person entitled to old age assistance, federal reimbursement of one-half of the pension up to a maximum of \$30, while under Title IV the maximum basis for federal reimbursement for a mother and two children is one-third² of \$30. As children eat more and wear out their clothing more rapidly than elderly people, this is obviously an entirely unfair basis for reimbursement. The change from no maximum to this very inadequate one is said to have been made in Committee when

¹ [An amendment of 1939 to the Social Security Act (Title IV, sec. 402, subsec. 5) provides that state agencies administering A.D.C. must establish and maintain personnel standards on a merit basis. Failure to do this means that approval of the state plan will not be continued by the Social Security Board.]

² [Now one-half, see below, p. 242, n. 1].

a congressman called attention to the fact that the widows of veterans were given \$18 for the first child and \$12 for each additional child, but did not explain that the veteran's widow was paid \$30 in addition to the pensions for the children, so that a veteran's widow and two children received twice as much as the Security Act fixes as the basis for reimbursement for dependent children. The fact that even with these limitations the federal government reimbursed the states for only one-third instead of one-half the grant¹ may be accounted for by the fact that in 1934 the counties were already paying most of the cost of mothers' aid and that dependent children did not have a large voting lobby, as did the aged, to urge their claims on Congress.

Social workers feared that the unfortunate specification in the federal act of an \$18 maximum for the first child and \$12 for each additional child as the basis of federal reimbursement and the loose and inaccurate statement frequently made that the federal government matches one dollar for every two expended by the state and local governments for aid to dependent children might have the effect of lowering the standard of care for these dependent children. But in most states forewarned was forearmed. A comparison of the legal limitations on grants of states receiving federal aid for dependent children in 1937² with the legal limits in 1934³ shows that four of this group of states⁴ had no legal maximum in 1934 and eleven in 1937,⁵ that seven had raised a lower maximum to the federal standard,⁶ while only two (West Virginia and Indiana) had lowered the

¹ [The situation that was justly criticized here has now been corrected in some measure by the 1939 amendments to the Social Security Act. The amendments to Title IV (Aid to Dependent Children) provided, effective January 1, 1940, that the Social Security Board would match the state grants on the basis of one-half instead of one-third. Unfortunately, the maximum has not been raised. With regard to the age requirements, aid may now be extended to children under eighteen provided they are attending school regularly.]

² *Characteristics of State Plans for Aid to Dependent Children, April 1, 1937* (Social Security Board Publication No. 18).

³ *Social Security in America: The Factual Background of the Social Security Act*, Table 49, pp. 235-36.

⁴ Colorado, Maine, Maryland, New Jersey.

⁵ Alabama, Arkansas, Louisiana, Michigan, New Mexico, Ohio, Washington in addition to Arizona, Massachusetts, Rhode Island, Wisconsin, and District of Columbia, which had previously had no fixed legal limit and did not change their laws.

⁶ These were Idaho, Nebraska, New Hampshire, Oklahoma, Pennsylvania, Utah, and Vermont. (The last raised its grant to \$52 a month for three children.)

previous legal maximum to conform with the federal reimbursement standard; Colorado, Maine, and Maryland, which formerly had no legal maximum, had adopted the federal standard, while New Jersey, which had had no legal maximum, had adopted as its limitation the cost of care in an approved child-caring institution, and Wyoming had retained a legal maximum grant lower than the federal standard. In California and Delaware the maximum remained the same in 1937 as in 1934. This means that so far as legal limitations in the law are concerned there were real gains made during the first two years after the passage of the Social Security Act.

Acceptance by the states of the federal grants-in-aid for dependent children was discouragingly slow in the first two years after the act was passed. By the end of 1937 the number accepting this form of aid had increased but was still smaller than the number accepting other forms of aid under the act, except aid for the blind. Thus all the states, including the District of Columbia, Alaska, and Hawaii as states, had qualified for grants-in-aid authorized by the Social Security Act for maternal and child health, public health, and unemployment compensation, and all but one, Virginia, for aid to the needy aged. The number of states receiving grants-in-aid under the other titles were as follows: Aid for Crippled Children, 49;¹ Child Welfare Services, 48;² Aid to Dependent Children, 40;³ Aid to the Needy Blind, 38.⁴

Under the so-called Assistance Program the numbers assisted by the federal government program of grants-in-aid during December 31, 1937, were as follows: Aid for Dependent Children—Families, 211,969, Children, 527,101; Aid for the Needy Aged, 1,582,144; Aid for the Needy Blind, 43,784. The obligations incurred by the federal, state, and local governments for the care of these dependents during that month were for children, \$6,799,001; aged, \$30,789,323; blind, \$1,120,032.

¹ [By January, 1941, all the forty-eight states and the District of Columbia, Alaska, Hawaii, and Puerto Rico had qualified for and were receiving the federal grants-in-aid for services for crippled children.]

² [All the fifty-two jurisdictions—i.e., the forty-eight states, District of Columbia, Alaska, Hawaii, and Puerto Rico—were co-operating under the provision for Child Welfare Services by July 1, 1940.]

³ [All the states except Iowa and Nevada had enacted A.D.C. laws by July 2, 1941. Alaska is still not participating.]

⁴ [The states without approved Aid to the Blind laws, January 1, 1942, included Delaware, Illinois, Missouri, Nevada, Pennsylvania, and Alaska.]

THE CHILD AND THE STATE

As an indication of the effects of the Social Security Act on the mothers' aid program, the number of families receiving mothers' aid and the average monthly grant per family in 1931, 1936, and 1941 is given for a group of states in the following table.

In this group of states the numbers receiving this form of assistance since federal funds became available quadrupled or increased

COMPARISON OF THE NUMBER OF FAMILIES AND AVERAGE GRANT
PER FAMILY FOR AID TO DEPENDENT CHILDREN IN
19 STATES* IN JUNE, 1931,† 1936,‡ AND 1941§

STATES	NUMBER OF FAMILIES			CHILDREN UNDER SIXTEEN YEARS OF AGE RECEIVING AID IN 1941, PER 1,000 POPULATION UNDER SIXTEEN	AVERAGE GRANT PER FAMILY		
	1931	1936	1941		1931	1936	1941
Alabama.....	||	4,911	5,801	17	||	\$ 8.86	\$13.79
Arizona.....	||	465	.471	40	||	27.98	32.83
Arkansas.....	131	2,301	6,462	25	\$ 4.33	6.08	13.50
Colorado.....	650	997	6,362	50	26.50	26.87	30.28
District of Columbia.....	161	1,533	982	22	65.83	37.50	37.28
Idaho.....	230	1,390	3,048	48	13.16	25.94	30.10
Maine.....	608	1,185	1,545	16	30.16	35.69	39.60
Maryland.....	121	5,494	6,531	38	30.52	29.50	30.53
Nebraska.....	1,453	1,422	5,852	37	17.81	23.26	27.57
New Hampshire.....	175	346	578	11	19.77	34.92	45.58
New Mexico.....	||	32	2,011	29	||	29.28	26.28
New York.....	18,423	24,727	33,203	22	52.62	41.72	46.04
Oklahoma.....	1,896	15,311	19,562	61	7.29	8.84	15.26
Rhode Island.....	388	569	1,305	20	55.09	53.17	45.50
Utah.....	628	1,901	4,024	56	11.77	29.07	41.83
Vermont.....	90	291	613	17	21.11	17.31	32.69
Washington.....	2,517	4,370	5,309	32	19.66	26.62	36.23
Wisconsin.....	7,052	8,047	12,484	30	21.66	28.21	36.64
Wyoming.....	95	502	772	26	\$22.55	\$28.99	\$32.89

* The states selected are those receiving federal funds in June, 1936, and two states, New York and Rhode Island, not receiving federal funds in June, 1936, but which were reporting to the Social Security Board at that time and were receiving federal funds in 1937. [Data for 1941 have been added.]

† *Mothers' Aid, 1931* (U.S. Children's Bureau Pub. No. 220), Table I, pp. 8, 9, 17, 28, and 29.

‡ *Public Assistance* (Social Security Board, Bureau of Research and Statistics), I, No. 6, Table 202.3-6, 3.

§ *Social Security Bulletin*, IV, No. 8 (August, 1941), 38.

|| Law not passed or not in operation in 1931.

even more spectacularly in Arkansas, Colorado, District of Columbia, Idaho, Maryland, Nebraska, Oklahoma, Utah, and Wyoming. Substantial increases in the amount of the average grants were reported in Idaho, Maine, Nebraska, New Hampshire, Utah, Vermont, Washington, Wisconsin, and Wyoming. The average grant per family in the states making the lowest grants has increased but is still below

the subsistence level. Thus the average monthly grant per family in Arkansas, which, it will be recalled, has no legal maximum, rose from \$4.33 in 1931, to \$6.98 in 1936, and to \$13.50 in 1941, while in Oklahoma it was \$7.29 in 1931, \$8.84 in 1936, and \$15.26 in 1941. These are, of course, entirely inadequate grants even from an emergency-relief standpoint and can give only starvation security to children.

Unquestionably the number of dependent children in need of mothers' aid increased with the depression, but in such states as Arkansas and Oklahoma, where local funds had been entirely inadequate, and in Maryland, where mothers' aid was formerly given only in Baltimore County, state-wide coverage, the wiping-out of waiting lists, and the transfer of eligible families from relief rolls to mothers' aid as federal funds for the latter became available explain in part the large number of children assisted.

The number of children receiving aid per thousand children under sixteen years of age has varied greatly from state to state. In eight states the rate in June, 1941, was forty or more per thousand; in thirteen, from thirty to thirty-nine; in eleven, from twenty to twenty-nine; and in twelve the number aided was less than twenty per thousand children under sixteen years of age. Extreme examples are Mississippi with a rate of four per thousand and Oklahoma and Pennsylvania with a rate of sixty-one per thousand.¹ Clearly, definitions of need as well as the use and availability of appropriations differ greatly.

When limited funds are available it is much better to give adequate relief to a small number of families and appeal to the legislature or county board for funds to care for those on the waiting list. Whether this appeal is successful or not, it is, at any rate, a mistake to reduce the whole program to the general level of poor relief.

As the program develops with federal assistance, we may expect greater uniformity but not identity in the state laws, in the amount of the grants per family, in methods of administration, and in the proportion of children under sixteen receiving mothers' aid. Since this form of assistance is based on need, no maximum should be specified in the law. In states with a maximum grant as low as the federal law specifies, supplementation from relief funds has been

¹ *Social Security Bulletin*, IV, No. 8, 38.

necessary for a very large percentage of the families, particularly those living in urban areas. This creates administrative confusion and largely defeats the purpose of mothers' aid without a saving of tax funds.

Recent emphasis on the importance of "integrating" the administration of the aid to children, the aged, the blind, and general relief has brought unfortunate results for the children in a number of states. The administration of old age assistance, involving as it does much larger numbers and various types of political pressure, has occupied so fully the attention of federal and state administrators that the special needs of the children are in danger of being almost completely forgotten. Where administration of relief is also combined with these categories, there is certain to be even greater confusion and losses to children. For while the number of children and the aged receiving assistance will remain fairly stationary, the number of unemployed on relief is subject to violent and sudden changes. This means expansion and contraction of staff, which makes impossible the best type of case work with children who will be under care for years. While the social services of a state or county should be assembled in a state or county department of public welfare, to scramble them means a return to the almshouse principle of a hundred years ago. This so-called integration is often justified on the theory that confusion results from the fact that several case workers will be dealing with one family. However, reports to the Social Security Board show that there is little such duplication.¹

The case-work services for the children for whom the federal, state, and local governments have assumed responsibility should be as good as the best children's agencies provide. Family welfare societies have usually not provided this type of service for children,

¹ *Second Annual Report of the Social Security Board, 1937*, p. 172, shows that out of 65,464 families receiving A.D.C., 49,494 received no other form of public aid. Of those in which another form was given, in only 1,768 families were the other public assistance categories being given, while 8,657 were assisted from general relief funds. This was largely the result of legal maximums on A.D.C. or because the appropriation for A.D.C. was inadequate, which made supplementing from general relief funds necessary. This supplementing will, of course, come to an end as A.D.C. grants become more adequate (see also *Fourth Annual Report, 1939*, p. 98). On the fallacy of two or more categorical grants in one family, see "Categories Again," editorial by Grace Abbott, *Social Service Review*, XII (1938), 130-33.

probably because they have regarded this care as temporary and have wisely devoted their attention to the rehabilitation of the parents. But the mothers' aid families are broken families, the father is dead or permanently incapacitated, and rehabilitation is not the problem. Making sure that the children have an opportunity to develop in full their capacities is the problem to which the case worker must give her attention. Children are not pocket editions of adults, and knowledge and skill in dealing with them is not a by-product of case work with adults. The same type of training and specialized experience that is demanded for the administration of other child welfare services is needed for the administration of aid to dependent children.

When the Social Security Act was passed, it provided no widows' and orphans' insurance giving to the wives or husbands and children of the insured an allowance without a means or fitness test, as had a number of other countries.¹ The British law is of special interest in this connection. As the insurance benefits it provides are very low,² supplementary relief for many of the insured must be frequently needed. As Great Britain has no special assistance program for those who are not insured or those for whom the benefits are inadequate, they are cared for by the general public assistance authorities.³

GRACE ABBOTT

¹ [This omission in the Social Security Act is now corrected by a 1939 amendment, under which Title II became the *Federal Old Age and Survivors Insurance Benefits*.

² [The Widows', Orphans' and Old Age Contributory Pensions Act, 1925 (15 and 16 George V, c. 70), which covers substantially the same wage-earning population as that of the national health insurance acts, provides in general that a widow of an insured man shall, unless she remarries, be paid a pension of 10s. a week up to the age of seventy when an old age pension is substituted for the widow's pension. If there are dependent children, she receives an allowance of 5s. a week for the eldest child under fourteen (or under sixteen, if at school) and 3s. a week for each younger child. In the case of motherless children, orphans' pensions of 7s. 6d. a week are paid. Before a pension becomes payable, the deceased must have been insured for 104 weeks and must have paid the same number of contributions, or if insured for 208 weeks, an average of 26 contributions a year must have been paid during the last three years. Central administration is by the Ministry of Health.—EDITOR.]

³ [In March, 1940, the supplementing of the insurance benefits and non-contributory old age pensions was transferred from the local authorities to the central government's Assistance Board (formerly the Unemployment Assistance Board). See *Social Service Review*, XV, 533.]

1. The First Law—the Illinois Funds to Parents Act

LAWS OF ILLINOIS, 1911, PP. 126-27

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That section 7 of the Act entitled "An Act relating to children who are now or may hereafter become dependent, neglected or delinquent, to define these terms and to provide for the treatment, control, maintenance, adoption and guardianship of the person of such children," approved June 4, 1907, be and the same is hereby amended so as to read as follows:

SEC. 7. If the court shall find any male child under the age of seventeen years or any female child under the age of eighteen years to be dependent or neglected within the meaning of this Act, the court may allow such child to remain at its own home subject to the friendly visitation of a probation officer, and if the parent, parents, guardian or custodian consent thereto, or if the court shall further find that the parent, parents, guardian or custodian of such child are unfit or improper guardians or are unable or unwilling to care for, protect, train, educate or discipline such child, and that it is for the interest of such child and the people of this State that such child be taken from the custody of its parents, custodian or guardian, the court may make an order appointing as guardian of the person of such child, some reputable citizen of good moral character and order such guardian to place such child in some suitable family home or other suitable place, which such guardian may provide for such child or the court may enter an order committing such child to some suitable State institution, organized for the care of dependent or neglected children, or to some training school or industrial school or to some association embracing in its objects the purpose of caring for or obtaining homes for neglected or dependent children, which association shall have been accredited as hereinafter provided.

If the parent or parents of such dependent or neglected child are poor and unable to properly care for the said child, but are otherwise proper guardians and it is for the welfare of such child to remain at home, the court may enter an order finding such facts and

fixing the amount of money necessary to enable the parent or parents to properly care for such child, and thereupon it shall be the duty of the county board, through its county agent or otherwise, to pay to such parent or parents, at such times as said order may designate the amount so specified for the care of such dependent or neglected child until the further order of the court.

2. The Massachusetts Commission on Mothers' Pensions

REPORT OF THE COMMISSION ON THE SUPPORT OF DEPENDENT MINOR
CHILDREN OF WIDOWED MOTHERS, JANUARY, 1913
(HOUSE NO. 2075)

MAJORITY REPORT

It has long been the practice of charitable agencies in Massachusetts, as elsewhere, to separate children from their mothers when circumstances of whatever kind have made it appear that the members of the family would then be better off. In itself separation is not held to be desirable, and there is little doubt that today it is resorted to with much less readiness than was the case in the earlier period, and that very careful discrimination has come to be employed by the well-managed agencies. Separation takes place for a variety of causes, mainly reducible to two: the mother's unfitness or incapacity for her rôle, and her economic disabilities. The two causes may, of course, be present together.

Your commission has sought especially to discover how frequent were the cases of economic disability. To this end it requested virtually all the important child-helping agencies of the Commonwealth to report the causes of separation for all new instances arising in the six months' period, Jan. 1 to June 30, 1912, and for all the other active cases of that period . . . [p. 12].

Returns were secured for 754 children not living with widowed mothers in the six months' period. In the cases of 328, or 43.3 per cent., of these children, removal was reported to have taken place because of the bad conduct of the child or—much oftener—the immorality or other unfitness of the mother. In the cases of 426 or 56.7 per cent., of the children, such causes were not reported to be involved. In a clear majority of the 426 cases economic causes determined separation . . . [pp. 12-13].

It is sometimes the policy of societies to leave with their mother as many children as she can support—seldom more than one or two—and to remove the others. That this procedure is likewise to be condemned so far as separation is involved scarcely needs saying . . . [p. 16].

By the Workmen's Compensation Law aid is given to survivors upon certain fixed terms and without reference to the character of the recipients. The commission believes, in regard to the widows in its study, that the best interests of the State could be more successfully served by a different disposition. It believes that the widow without children or with children grown up is in a situation that she can generally manage. It believes that aid should be given only where there are young children in a good family, and then only in respect of them.

The commission rejects the principle of payment by way of indemnity for loss. It proposes the principle of payment by way of subsidy for the rearing of children. The terms "pension," "indemnity" and "compensation" are irrelevant, but the term "subsidy" implies that a condition exists which, aided, will result in positive good for the State. Subsidy makes it feasible that children should stay with their worthy mothers in the most normal relation still possible when the father has been removed by death. It is intended not primarily for those with least adequate incomes under the present system of aid, but for the fit and worthy poor. What a good mother can do for her own children no other woman can do, and no different device can do . . . [p. 31].

The commission believes that no aid can be given, except under the poor-law and by private societies, to widows unfit to spend money for the improvements of their families. Aid may have to be given them hesitatingly, without assurance, and under abundant supervision. When even then family life is not really maintained, separation of the children may be resorted to as being genuinely in their interests. Whether it is then best that they be boarded out or placed in institutions must depend on a variety of circumstances.

It seems not undesirable to create in the community a distinction between subsidy and relief. The family receiving the former may desire to live up to the special confidence reposed in it. Its income is

regular and adequate. Supervision is less frequent than with other families. Detection of real misuse of the subsidy compels its cessation and reduces the family to the position of the incompetent poor. On the other hand, a family declared ineligible for subsidy may often, through the friendly offices of philanthropic societies, be trained to later eligibility . . . [p. 32].

MINORITY REPORT

Massachusetts is different from most other States in the Union in her methods of relief, and her laws for care of the poor are broad enough, if properly applied, to provide adequately for all classes,—widows, widowers, mothers with sick husbands, etc. We need no new legislation entailing increased expense to the Commonwealth, but a liberal interpretation of our existing statutes and a realization on the part of our different communities that those who are elected or appointed to serve them as overseers of the poor are not selected because of their ability to keep the tax rate down, but because of their ability to do what is best for those who, through no fault of their own, have become dependent upon public charity.

I am unable to accept the facts as presented by the majority of the commission based upon the reports received from various public and private agencies. These reports, made by different persons with varying standards, are to my mind wholly unreliable.

I made a study of 100 cases reported to the commission, and found the facts in such cases totally at variance with the reports. My inability to accept the results obtained by the commission from these reports forces me to disagree with the conclusions of the majority [pp. 35-36].

3. The New York Commission on Pensions for Widows

REPORT OF THE NEW YORK STATE COMMISSION ON RELIEF FOR WIDOWED
MOTHERS TRANSMITTED TO THE LEGISLATURE MARCH 27, 1914

The New York Congestion Commission reports as follows:

"Mr. Homer Folks, former Commissioner of Public Charities of New York, although questioning the feasibility of public relief to the poor in their homes, favored before the Committee the granting of pensions by the city to widows with children, provided the

mothers meet certain standards as to character. He emphasized, however, that this relief should not be regarded in any sense as charity to the widows, but that it should be done on a basis, so far as practical, to take it out of the realm of charity and approach as nearly as possible to an indemnity for the earning capacity of the husband, so that the mother may be enabled to bring up her children as they would have been brought up had their father lived and worked for them" [p. 18].

Despite the assertions of many of the leading charity workers of the State that it was wrong in principle and impossible in practice to classify applicants for relief and differentiate between kinds of treatment, the charity societies themselves are making a special provision for widowed mothers and are granting pensions to the extent of their ability. Perhaps as an indirect effect of the national movement for "mothers' pensions," the treatment of the widow by charity has improved steadily in the last few years, which is in itself a proof of the absurdity of these protests against classification. The duty of the State of New York to alleviate the condition of the adult poor is a debatable question, but that it is morally obligated to care for the dependent child cannot be doubted. This principle has always been recognized by our government; indeed, it is but the counterpart of its right to compel all children to be educated in its public schools.

Therefore, the purpose of the recommendations of this Commission is not to impose any new duty upon the State, but, rather, to bring the performance of an established and inherent duty to a higher standard of efficiency and adequacy that will conform with our wisest conceptions of the proper method of rearing the best citizens of the future [p. 19].

The Special Committee on Widows' Pensions of the New York Neighborhood Workers' Association stated that:

"The death of the wage-earner brings many a family to the line of dependency. Heretofore we have either forced the mother of such a family to seek work outside or bring it into the home, or we have relieved her of the burden of the support of her children by placing them in public institutions or in other private families. All four methods are ineffectual and costly, and in most instances serve but

to add to the misery and degeneracy of those from whom death took their natural protector. For years, the private relief societies have striven to relieve the distress of worthy widows but despite their most valiant efforts such relief had admittedly been inadequate. Thus even in those exceptional cases in which a plan of family rehabilitation can be worked out and put into practice there is not sufficient money to make unnecessary the use of these other make-shifts. As a consequence, society has almost forced the widow to earn sufficient for her children's training at the cost of the home, or to drive from that home the children whom she should train" [pp. 26-27].

Dr. Josephine Baker, Chief of the Division of Child Hygiene of the New York City Department of Health, tells of the following instance:

"The mother in question is Mrs. M. T., Brooklyn. Her husband is blind. She placed all of her six children in an institution and took a position, intending to earn money sufficient for passage to Europe for herself and children. The Bureau of Charities investigated the same, as I understand, and required her to take two of her children home. When Mrs. T. protested that she could not earn a living at home, she was advised by the Bureau of Charities to board children in addition. She followed this advice and now has four children from the Home, besides two of her own. This makes a total of six children at her home. Two of her own children are at the Angel Guardian Home and two more in an Institution at Staten Island" [p. 65].

There have been several attempts in the course of our inquiry, to mislead the public into believing that the cost of a system of State assistance would be enormous. Thus Mr. Lee K. Frankel, ex-superintendent of the United Hebrew Charities, and now vice-president of the Metropolitan Life Insurance Company, and Dr. Edward T. Devine have both assured this Commission that there are 183,000 widows in New York City, and that the expense of caring for the needy ones would run up into the millions and perhaps tens of millions of dollars annually, if we were to give our relief according to an adequate standard.

Of course, as a matter of fact, this number includes all widows regardless of economic condition. A good system of widows' pen-

sions would cost the community very little if any more than the present cost of caring for the children of such widows in institutions. But let us for the moment assume that Dr. Devine's estimate of \$1,000,000 a year as the amount needed to give adequate relief to the widowed mothers of New York City is correct.

All the charities of the city combined give less than \$750,000 annually for the relief granted to all the cases under their care . . . [pp. 105-6].

The Mothers' Assistance Laws in this country are a step forward from and not back to the old "outdoor relief," which has been a failure everywhere. The leaders in private charity in the West fully appreciate this—in fact, it is largely because of this they so unanimously approve of these laws. Our leaders here have as yet been unwilling to face the truth of this and have opposed the principle of government aid because of their fear that it will mean a return to the disgraceful condition that existed in New York City up to 1878 and that still exists, though in lesser degree, throughout the rest of the State . . . [p. 114].

The formation of the county boards of child welfare as recommended by this Commission should do much, not only to protect dependent children in their own homes, but also to bring together all the forces for good in every community, into an active harmonious group that would effectively drive out the evils resulting from the present system of incompetent poor relief and inadequate private charity in our villages, towns and cities [p. 115].

4. The District of Columbia Law, 1926

"AN ACT TO PROVIDE HOME CARE FOR DEPENDENT CHILDREN IN THE DISTRICT OF COLUMBIA," 44 UNITED STATES STATUTES

PART II, P. 758

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the parent of a child under the age of sixteen years is unable to provide for the proper care of such child in his own home, the mother or guardian of such child may make application to the board of public welfare of the District of Columbia, hereinafter called the board, for the benefits conferred by this Act, which application shall be

referred to a standing subcommittee of the board, at least one of whom shall be a woman: *Provided*, That such applicant has been a bona fide resident of the District of Columbia for one year preceding such application and that she is a citizen of the United States or has made application to become a citizen.

SECTION 2. The board shall thereupon make an investigation for the purpose of securing the following information:

a) Whether the mother or guardian is a proper person to have the custody and care of the child.

b) Whether the home is a satisfactory place for the training and rearing of the child.

c) What resources may be available for the complete or partial maintenance of the child, including the full amount, if any, of real and personal property owned by the parent or held in trust for the child; whether there are any persons or organizations legally obligated to assist in the support of the child.

d) Whether legal steps have been taken to compel the father of the child, if he be living, to provide support when he wilfully refuses to do so and with what result.

e) What amount of aid is needed to keep the child in its own home and to provide proper care.

SEC. 3. The board shall make written findings based upon its investigations. If it shall find affirmatively on subsections *a*, *b*, and *d* of section 2, and further that the income from, or the amount of, real and personal property owned by the parent or held in trust for the child, if any, is not of an amount or character which makes the giving of public aid inappropriate or unnecessary, the board may then make an order for a monthly allowance sufficient to insure the proper maintenance of the child in the home with the mother and, if it deems necessary, may impose such conditions upon the granting of the allowance as will promote the welfare of the child. The allowance shall be discontinued whenever the mother ceases to be a resident of the District of Columbia.

SEC. 4. The board may award an allowance from month to month or for a continuous period. It shall review all allowances at regular intervals and in no case shall an allowance be continued for more than six months without such review. Any allowance may be in-

creased or decreased in amount, or discontinued, and the board may alter or amend the conditions upon which the allowance was previously granted upon a showing that the welfare of the child, and the protection of the public interest demands such change, discontinuance, or amendment after reasonable notice has been given to the mother of the child.

SEC. 5. The board shall cause every home for which an allowance is made to be visited by its representative as often as may be necessary to observe the conditions which obtain in the home, the care which the child is receiving, and to offer such friendly counsel and advice as may be helpful to the mother and the child.

SEC. 6. The board shall keep on file a full record of each applicant for, or recipient of, assistance under this Act, including the reports of investigations, correspondence and other pertinent information, together with the orders of the board in each case.

SEC. 7. The board shall make such reasonable rules and regulations as may be necessary to the proper administration of this Act.

SEC. 8. Any person who attempts to obtain, or obtains, by false representations, fraud, or deceit, any allowance under this Act, or who receives any allowance knowing it to have been fraudulently obtained, or who aids or assists any person in obtaining or attempting to obtain an allowance by fraud, shall be punished by a fine of not more than \$200 or imprisonment for not more than twelve months, or both.

SEC. 9. The words "child" and "parent" where used in this Act shall be interpreted to include the plural.

SEC. 10. That in order to carry out the provisions of this Act there is authorized to be appropriated for the fiscal year ending June 30, 1927, the sum of \$100,000, payable from the revenues of the District of Columbia, and for the fiscal year ending June 30, 1928, and annually thereafter, the Commissioners of the District of Columbia shall include in the estimates of appropriations for said District such amount as may be necessary for this purpose. The Commissioners of the District of Columbia, upon nomination by the board, shall have power to appoint a supervisor, and such investigators, stenographers, and clerical assistants as are necessary to administer this Act, at such salaries as may be fixed for similar services

by the provisions of the Classification Act of 1923. Such employees may be removed by the Commissioners upon recommendation of the board.

5. The New Jersey Law of 1932

"AN ACT TO PROMOTE HOME LIFE FOR DEPENDENT CHILDREN AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF" (REVISION OF 1932),¹ NEW JERSEY LAWS OF 1932, CHAP. 263

Be it enacted by the Senate and General Assembly of the State of New Jersey:

Definitions.—1. For the purpose of this act, the following words and terms shall be deemed and taken to have the meaning herein given to them:

a) The word "mother" when used in this act shall include any female standing in loco parentis to any child or children and assuming the responsibility of a mother and also a stepmother and the term child shall include a stepchild. . . .

2. Any widow who is the mother of a dependent child or children under the age of sixteen years who has insufficient means and is unable to support it or them and maintain her home, or (a) any mother of a dependent child or children under the age of sixteen who has insufficient means and is unable to support it or them and maintain her home on account of her husband being confined in a jail, prison or penitentiary being sentenced for a term that will not expire for a year after the date of filing her petition, or (b) any such

¹ [The history of the New Jersey legislation is particularly interesting. A law passed in 1899 created the New Jersey State Board of Children's Guardians. Its object was to remove children from almshouses, and the Board was given the care of all children adjudged public charges who were in almshouses or in any family to which they had been committed or apprenticed. Boarding these children in foster boarding-homes was the first plan developed although this often cost the state more than it would have if they had been boarded in their own homes. In 1910 the attorney-general ruled that payment of board to the mothers was possible under the law. Thus before the first mothers' aid law was passed, the New Jersey State Board of Children's Guardians had found a way of providing what amounted to mothers' aid. In 1913 as a result of the growth of sentiment in favor of mothers' aid legislation an Act "to promote home life for dependent children" was passed by the legislature. For discussion of the administrative procedures developed by 1925, see *Child Welfare in New Jersey*—Part II, *State Provision for Dependent Children*, by Ruth Berolzheimer and Florence Nesbitt (U.S. Children's Bureau Publication No. 175; Washington, D.C., 1927).—EDITOR.]

mother whose husband is under indictment for desertion of his wife and children and cannot be found within one year from the date of the desertion, or (c) any such mother whose husband is an inmate of an institution for mental or physical illness requiring a prolonged treatment, or (d) any mother whose husband is physically or mentally ill and is unable to support his child or children, who are dependent, and who is under proper and reasonable treatment for the possible removal of such defect; and said widow or mother has lived for five years continuously next preceding the filing of her petition in said county and has a legal settlement therein or has lived in such county for a continuous period of at least five years and secured a legal settlement therein and succeeding which has lived in the State of New Jersey for a period of not more than five years next preceding such application in some other county, may file a petition of assistance to the Common Pleas Court or the juvenile and domestic relations court of the county wherein the petitioner has a settlement; *provided, however*, that there are no relatives of the mother or children who are legally liable for the support of said mother and children. . . .

4. The court shall cause a copy of the petition provided for in sections two and three thereof, and a notice of the time and place when it will be presented to the court, to be served on or mailed to the overseer of the poor and/or the director of welfare of the county welfare board having jurisdiction over the district wherein the petitioner has a settlement, the county adjuster of the county wherein the court has jurisdiction, the board of chosen freeholders thereof and the State Board of Children's Guardians at least ten days before such time.

5. Immediately upon receipt of such notice and copy of the petition aforesaid, the State Board of Children's Guardians shall examine into the truth and merits of the petition and make an investigation of the home life conditions of the petitioner and shall prepare a report of its findings which report shall set forth (a) the facts found by its investigation to prove or disprove all the allegations set forth in the petition, and in addition whether or not the dependency is caused by the wilful neglect of the mother, whether the mother is mentally, morally and physically fit to care for the

children, whether the home is a satisfactory place for the training and rearing of the child or children, a statement of any additional real or personal property including any income or bank accounts not set forth in the petition, and the names and addresses of any additional relatives not disclosed by petitioner, and any other facts that will assist the court in reaching a decision in the matter; (b) the report shall also give a statement containing items showing the total income of the woman, all her children and the husband if living, from all sources, also a budget showing the minimum amount of money necessary for the maintenance of the family and the minimum amount that the widow or mother will require to support and care for her children under sixteen years old, the said total per child not to exceed the cost of care of a child in an approved child caring institution.

6. Prior to the return day, the State Board of Children's Guardians shall file a report of its findings with the court and the board of chosen freeholders or its designated representative setting forth in full the results of said examination and investigation as provided for under section five hereof including the family budget and a recommendation as to what is the lowest amount based on said budget that is necessary to provide for the support and care of such child or children and upon such report being made and filed with the court, thereafter upon the return day fixed for the hearing, the court shall examine under oath all parties in interest who desire to be heard. . . .

7. If, upon the completion of the investigation, examination and hearing provided for under section five and six hereof, the court shall find that the said petitioner is a widow or mother of a child or children under the age of sixteen years and that she is in all respects qualified to receive said relief in accordance with the conditions set forth in sections two and five of this act, and that her petition has been in all respects verified by the report filed in accordance with section five of this act and the testimony of witnesses or records, and that the petitioner has a settlement and that there is no relative having the legal responsibility and financial ability to support her child or children and that unless relief is granted the mother will be unable properly to support and educate her children, and that

they may become a public charge, it shall make an order committing said family to the care of the State Board of Children's Guardians, and directing that there shall be paid to the mother through the State Board of Children's Guardians out of the county funds for the support of her children under sixteen, an amount in no case to exceed the amount recommended in subdivision (b) of the report of findings filed with the court, as provided for under section five hereof, the amount to be awarded to be, subject to the aforesaid limitation, discretionary with the court; *provided*, that any widow who is a mother of a child or children under the age of sixteen, and any mother, who is eligible to receive relief pursuant to the provisions of this act, and who now is receiving or may hereafter receive relief pursuant to the provisions of this act, or the act of which this act is a revision, and who shall remain in or who shall remove to some other county other than the county in which she receives relief, such relief shall continue so long as such recipient of relief continues eligible thereto, pursuant to the provisions of this act, until she shall have resided for five years continuously in such other county, whereupon the relief first granted shall cease and said recipient of relief may thereupon or within a period of sixty days prior thereto file her petition for relief with any court of competent jurisdiction of the county in which she then lives and has a settlement. . . .

8. It shall be the duty of the State Board of Children's Guardians to see that any widow or mother committed to its care, pursuant to the provisions of this act is properly caring for her children, that they are sufficiently clothed and fed, that they attend school regularly and receive proper religious instruction; and that said family shall be visited at least four times a year.

9. Whenever the State Board of Children's Guardians shall find that any mother or any woman standing in loco parentis to whom relief has been granted under the provision of this act is not properly caring for, educating and supporting the children or is misusing the allowance granted for the children, or whenever it shall find in a case that the father of the children fails to comply with the directions of the attending physician or fails to continue treatment for the removal of his physical or mental defect, or that the father has re-

covered from his illness, or if the father of the children is discharged from prison, the said board shall make a full report setting forth the facts in the matter and file the same with the court and the board of chosen freeholders; the court shall fix a day for a hearing, notify the petitioner to appear before it, reopen the case, and revoke the order granting the allowance or make such further order as may appear to the court necessary to protect the interest of the children, or may make an order committing such child or children to the care, custody and control of the New Jersey State Board of Children's Guardians. . . .

15. No person receiving relief, assistance or support under this act shall be deemed to be or classified as a pauper by reason thereof. . . .

THE CHILD AND THE STATE

6. Development in New York, 1915-1935¹

Year	No. of Boards	Families Aided	Children Aided	Amounts Spent for Allowances	Average Annual Grant per Child
1915(a)	30	1,983	6,384	160,154	25
1916	33	5,030	15,359	934,940	61
1917	33	7,411	21,339	1,813,023	85
1918	35	9,245	27,043	2,328,668	86
1919(b)	35	10,002	30,234	2,828,447	94
1920(c)	46	11,359	34,762	3,974,986	115
1921	46	12,547	38,400	5,011,918	131
1922(d)	47	13,140	40,499	5,581,448	138
1923(e)	47	11,961	35,646	5,529,916	155
1924(f)	47	13,287	37,684	5,799,749	154
1925	47	13,845	38,799	6,154,489	159
1926	47	14,514	40,123	6,396,391	159
1927(g)	47	15,984	44,312	6,767,743	153
1928	47	17,405	48,436	7,768,263	160
1929	47	18,340	51,205	8,139,733	159
1930(h)	47	19,240	53,584	8,946,733	167
1931(i)	48	22,047	59,176	11,488,861	194
1932(j)	48	24,902	63,411	12,678,473	200
1933(k)	47	26,300	65,141	11,731,176	180
1934	52	27,401	66,611	12,019,490	180
1935(l)	52	27,952	66,633	12,189,491	183

Original law, signed May 15, 1915.

(a) For widowed mothers only whose husbands were citizens and residents of New York State at time of death. Mother to have resided 2 years in county or city just preceding application.

Amendments broadening group of beneficiaries:

(b) 1919, Chapter 373, to include family of citizen father, resident of state at time of death or an alien father who had declared his intention to become citizen within 2 years of his death.

(c) 1920, Chapter 700, to include family of a father in state hospital and family of a father in state prison under sentence of 5 years or more. Mother must be a citizen or alien father must have had 2 years residence in state and have made declaration of intention within 5 years just preceding commitment.

(d) 1922, Chapter 546, to include family of a father permanently incapacitated and in hospital and family of a father actually confined in state prison under sentence of 2 years or more.

(e) 1923, Chapter 733, mother of a family required to have 5 years residence in U.S.A., 2 years in state and to have made a declaration of intention to become citizen.

1923, Chapter 731, to include second degree relatives when mother of children is dead.

(f) 1924, Chapter 458, to include family of father who had been deserter five years or more.

(g) 1927, Chapter 528, to include alien mother who had *not* made declaration of intention to become citizen.

1927, Chapter 684, to include family of TB father in sanatorium or returned home after ninety days, care with approval of medical superintendent. Declaration of intention to become citizen by mother *replaced*.

(h) 1930, Chapter 799, to grant allowances to a relative within second degree where mother of children is incapacitated and in hospital as well as dead. Period of desertion of father reduced to 2 years. Requirement of declaration of intention to become citizen by mother *removed*.

(i) Jefferson County Board of Child Welfare made first grants in November 1931.

(j) Tioga County Board of Child Welfare discontinued grants in August 1932 no funds available.

(k) Schenectady County Board of Child Welfare made first grants in December 1933.

(l) Chapter 547, Laws of 1935, removes institutional rate as maximum per child and specifically includes mother in the grant.

¹[Table prepared by the Supervisor of Child Welfare Boards, New York State Department of Social Welfare.—EDITOR.]

7. Progress in Administration in Massachusetts and Pennsylvania by 1922

PROCEEDINGS OF CONFERENCE ON MOTHERS' PENSIONS HELD UNDER THE AUSPICES OF THE MOTHERS' PENSIONS COMMITTEE, FAMILY DIVISION OF THE NATIONAL CONFERENCE OF SOCIAL WORK, AND THE CHILDREN'S BUREAU U.S. DEPARTMENT OF LABOR, PROVIDENCE, R.I., JUNE 28, 1922 (U.S. CHILDREN'S BUREAU PUBLICATION NO. 109; WASHINGTON, D.C., 1922)

STATEMENT OF ELIZABETH F. MOLONEY, STATE SUPERVISOR OF MOTHERS' AID IN MASSACHUSETTS

The Massachusetts Mothers' Aid Law was enacted in 1913. It is 9 years old this month. It has remained unchanged to date.

Those who framed the law had in mind two distinct purposes: First, to prevent the breaking up of the homes of fatherless families; and, second, to raise the level of public relief. Of the two purposes, that of raising the level of public relief was the more important and far-reaching.

The Mothers' Aid Law proposed direct benefits to comparatively few of the large number of applicants for public relief, but it was to serve as an entering wedge.

Prior to 1912, public aid in Massachusetts (as in other States) was a mere dole, limited by statute in State cases to \$2 a week per family from May to September and to \$3 a week for the remaining months of the year. The fact that the State reimbursement of cities and towns in State cases was limited to \$2 in the summer and \$3 in the winter served to establish these small sums of money as standards of relief for all public aid.

Chapter 331, *Acts of 1912*, amended the statute by adding that more money might be given "if so ordered by the State board of charity." But comparatively few overseers made use of their enlarged powers for some time after this amendment was added to the temporary aid law.

The Mothers' Aid Law (chap. 763, *Acts of 1913*) was a new departure in public relief in that it not only permitted but specifically required overseers of the poor to grant adequate aid in their homes to mothers with dependent children. The amount of aid per capita or per family was neither prescribed nor limited, the law stating:

"The aid furnished shall be sufficient to enable the mother to bring up the children properly in her own home."

Here for the first time we find expressed in a relief statute the belief that home life under the care of the mother is the best kind of child care. Here, also, we find it stated that the mother and her dependent children aided under this law shall not be pauperized thereby. Moreover, for the first time in the history of public relief in Massachusetts, the primary emphasis was placed upon relief, and legal settlement became a matter of secondary importance. No requirement as to citizenship nor as to legal settlement within the Commonwealth was made, three years' residence within the Commonwealth being the only residence requirement.

Before the passage of the Massachusetts Mothers' Aid Law State supervision of aid in the homes was limited to State cases. Under that law the Commonwealth agreed to reimburse cities and towns for one-third of the amount of aid rendered in each and every Massachusetts aid case, as well as for the full amount in cases where the mother had no legal settlement. Where the State's money goes, there supervision must follow, and so it came to pass under the Massachusetts aid law that the State was granted supervision of all cases with local settlement, as well as of State cases.

This made for uniformity. No longer were the overseers of the poor relieved of their responsibility in State cases. They were expected to investigate and decide upon the amount of aid to be granted in State cases, and to use the same degree of interest and economy in relieving cases where there was no settlement or where there was a legal settlement in some other town as they were wont to use in aiding persons settled in their own towns.

The Massachusetts aid law recognized the right of local relief boards to initiate aid under this law and to place upon the overseers the responsibility of determining whether an applicant for Massachusetts aid was eligible—by requiring the overseer to make a careful and thorough investigation of each case before granting aid. Since reimbursement by the State for its share of the expense depended upon approval by the State, the overseers ran the risk of having their bills disallowed if they aided cases that were not eligible.

The Massachusetts aid law allows the overseer of the poor to grant immediate aid without first awaiting the approval of the State department. This is a most valuable feature of the law, as it prevents long delays and possible suffering on the part of the applicant, such as is sometimes entailed in States where approval by the State or county board must be had before any aid can be granted. Though the Massachusetts law allows for necessary interim relief while the investigation is going forward, it does not relieve the overseers of the poor of their full responsibility for the aid granted.

The Massachusetts aid law provides long-continued aid if necessary, up to the time when the youngest child becomes 14 years of age. It requires the overseers of the poor to follow up the cases by visiting the homes at least once every three months and by reconsidering each case once a year.

It requires the overseer of the poor to keep careful records not only of the first investigation but of the quarterly visits, so that the Massachusetts aid law case records are complete histories of the cases and are kept on file in the local overseer's office as well as at the statehouse. The adoption of uniform application blanks and other forms tends to make these local records uniform throughout the State.

Formerly the case records of public relief were principally settlement histories and statements of amounts of aid granted or desired. The fact that family history records were required under the Massachusetts aid law gradually brought about the adoption of the case-history plan for all kinds of public aid.

In 1914, no such thing as a family budget was required. The Massachusetts aid budget adopted in that year was a first attempt. Now, in all forms of public relief, the overseers of the poor are thinking in terms of weekly expenses of the family for rent, fuel, food, and clothing and are comparing the sum total of expenses with the total income of the family from all sources. The law requires adjustment between the two columns, and the overseers of the poor are encouraged to increase the amount of aid in times of greater need, and to decrease it as the family becomes gradually more and more self-supporting. The duty of changing the aid to meet the changing needs of the family is placed squarely upon the shoulders

of the local overseers, who are best able to check up the wages of earning members of the family and other data affecting its resources.

Very early the overseers of the poor asked the State department of public welfare to define its policies, and a number of so-called policies were drawn up. These have several times been revised and changed. They are not additions to the law but interpretations of it.

Summing up, I would say that State supervision makes for uniformity and efficiency in the granting of aid to mothers with dependent children.

STATEMENT OF MARY F. BOGUE, STATE SUPERVISOR, MOTHERS'
ASSISTANCE FUND, PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE

The Pennsylvania law gives the administration of the mothers' assistance fund exclusively to unpaid county boards of women trustees, five to seven, generally seven, in number. The State legislature at its biennial session makes the appropriation, which is apportioned among the counties of the State and is matched by them on a 50-50 basis.

There are two points which I should like to make: First, through this system we are trying to build up in the State a body of lay workers, experienced in handling the problems of child welfare, understanding something of the technique, having a sense of State-wide solidarity and a common purpose, and capable of interpreting this new gospel of child care to their own communities. In only 22 counties do we have funds sufficient to provide for the employment of paid or trained workers. In the remaining counties, 29 in all, the trustees themselves do all the work of investigation and supervision and the clerical and visitation work. In the counties which employ workers the boards assume large responsibilities for actual family visiting, for tabulation of statistics, for health and other special studies, for budget work, and for legislative and publicity work. These volunteer county boards are thus the bedrock of the whole plan. They become a form of county organization which is capable of initiative and much independent action and which has its roots firmly and substantially embedded in local consciousness and custom.

My second point refers to State supervision and grows out of the first. The law provides that the State supervisor "shall have general supervision over the boards of trustees," shall "issue rules of procedure by which they shall be governed," and shall visit each board at least twice each year. In accordance with the spirit of the law, all responsibility for administration is thrown back upon the local boards, and it has been demonstrated to the complete satisfaction of everyone that they are thoroughly capable, economical, and conscientious administrators.

Thus within the framework of a unified and coherent State program special methods and forms of administration suitable to local needs have grown up. The boards have also developed special interests. Some are most interested in dietetics and household budgets, some in health work, some in school supervision, some in recreation and extra-educational opportunities. This has not, however, been at the expense of all-around supervision.

As the State office is not an administrative agency, neither is it a bureau of inspection. In a limited sense it fulfills a function similar to that of a central office in a city charity organization society: Face cards with summaries are filed there; statistics are compiled, grants approved, and policies outlined. But the first and foremost function of the State supervisor is the establishment of standards, and the chief means to that end is the instruction of the county boards in the method and technique of family case work and child care. It has been found that while it is not possible to insist upon absolutely the same standards in counties where boards are doing all of the work as in counties where there is a staff of highly trained workers, it is possible to develop among all the boards a realization of fundamental ends to be achieved, and something of the machinery for attaining those ends. Thus in Pennsylvania there are few boards which do not appreciate the fact that the all-around well-being of the child is their responsibility, and that this involves supervision over at least health, education, dietetics, and home care, and that a minimum of supervision requires a monthly visit to the family.

Summing up, the State office in Pennsylvania has served as a valuable instrument in gathering and utilizing a vast amount of hitherto unorganized service and in arousing the social instinct in behalf of the dependent, fatherless children of the State [pp. 19-23].

8. The Depression Years of 1933 and 1934 in Massachusetts

ANNUAL REPORT OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC
WELFARE FOR THE YEAR ENDING NOVEMBER 30, 1933
(PUBLIC DOCUMENT NO. 17)

The Mothers' Aid Law has been in effect for twenty years. At the end of each fiscal year, November 30, boards of public welfare are required to send to this department lists of their Mothers' Aid cases active on that date, including information as to the marital status of each mother, the number of her dependent children under 16 years of age, the number of her children over sixteen years of age who are living at home, and the amount and nature of the relief which she is then receiving.

At the end of the first fifteen-month period ending November 30, 1914, there were 2,334 active cases. For five consecutive years thereafter the number increased steadily until the peak was reached in 1919 with 3,743 cases. The World War and the influenza epidemic contributed largely to the increase during the years 1917, 1918 and 1919.

A steady drop in the number of cases followed from the year 1919 to November 30, 1926, when a new low level of 2,600 cases was reached. This level was maintained during 1926, 1927, 1928 and 1929.

Beginning in 1929 there has been a steady increase due to the business depression and unemployment. At the end of this fiscal year there were 3,912 active cases, representing a gain of 50 per cent in four years. This was the highest number reported during the entire twenty-year period. During the last fiscal year there were 1,135 new cases added [pp. 9-10].

ANNUAL REPORT OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC
WELFARE FOR THE YEAR ENDING NOVEMBER 30, 1934
(PUBLIC DOCUMENT NO. 17)

At the beginning of the fiscal year, on December 1, 1933, there were 3,912 mothers with 11,505 dependent children under sixteen years of age receiving Mothers' Aid . . . [p. 7].

During the year 1,002 new cases were aided, and 791 cases were closed, so that there were 4,123 mothers in receipt of Mothers' Aid at the close of the fiscal year (November 30, 1934).

The new cases that were received during the fiscal year included 1,002 mothers with 3,164 dependent children, and were classified as follows:

A. Classified as to legal settlement:

1. Without legal settlement: 189 mothers with 575 dependent children
2. With a legal settlement: 813 mothers with 2,589 dependent children

B. Classified as to widowhood:

1. Widows: 670 mothers with 2,155 dependent children
2. Not widows: 332 mothers with 1,009 dependent children

Note.—The 332 living husbands classified as follows: 156 were totally incapacitated, of whom 35 were insane, and 121 had chronic illness (of these 46 had tuberculosis and 75 had diseases other than tuberculosis); 86 were deserting husbands; 66 were divorced or legally separated; 24 were in jail.

Of the 1,002 new Mothers' Aid cases 137 were reopened cases as follows: Families removed from one town to another, 23. Insufficient income, 96. Conformity with policies, 7. Husband returned to institution, 2. Second husband died, 1. Home re-established, 3. Husband returned to jail, 3. Husband deserted, 1. Transferred from temporary aid, 1. Total, 137.

STATE APPROPRIATIONS AND REIMBURSEMENTS
FOR MOTHERS' AID

	Reimbursements
Sept. 1, 1913 to Nov. 30, 1914.....	\$ 174,999.36
Dec. 1, 1914, to Nov. 30, 1915.....	249,999.62
Dec. 1, 1915, to Nov. 30, 1916.....	299,998.78
Dec. 1, 1920, to Nov. 30, 1921.....	899,998.94
Dec. 1, 1925, to Nov. 30, 1926.....	900,000.00
Dec. 1, 1930, to Nov. 30, 1931.....	875,489.19
Dec. 1, 1933, to Nov. 30, 1934.....	\$1,050,000.73*

* [In the fiscal years 1924-25 and 1932-33 the reimbursements were also in excess of a million dollars.—EDITOR.]

Reasons for closing Mothers' Aid cases: Sufficient income, 393. Applicant remarried, 44. Family moved, 39. Husband resumed support of family, 42. Non-conformity with policies, 49. Youngest child sixteen years of age, 97. Unfitness of mother, 58. Transferred

to other sources of relief, 21. Applicant died, 23. Male lodger, 4. Applicant in hospital, 8. Unsuitable housing, 2. Application withdrawn, 4. Disbandment of home, 1. Only dependent child under 16 years of age in hospital, 6. Total 791 . . . [pp. 7-8].

The following policies on life insurance and burial expenses under the Mothers' Aid Law were adopted by the Advisory Board:

Life insurance carried by the family should be adjusted so as to cancel endowment and other expensive forms of insurance in favor of "whole life" policies and adjusted to each family's situation. The amount of insurance to be continued should not exceed \$500 for the mother and not exceed \$1,000 for the whole family, depending upon the size of the family and the other factors in each case.

The mother should be the beneficiary in all children's policies, and insurance upon the life of the mother should be payable to her estate.

Any insurance on the life of the mother or dependent children, premiums on which have been paid by a person other than the mother, may be continued, provided, however, that the insurance was taken out in good faith, and/or transferred in good faith, and provided that the person who is the beneficiary shall guarantee payment of the cost of funeral and burial expenses.

An allowance not exceeding \$100 granted to the mother for the funeral and burial expenses of any child under sixteen years of age, or to a relative or nearest friend for the funeral and burial expenses of the mother, will be approved, provided there is no insurance or other resources available.

Claims for the funeral and burial expenses of other members of the family must be made in the regular way under the provisions of chapter 117, section 17, of the *General Laws* . . . [pp. 8-9].

The financial burden upon cities and towns of supporting large numbers of families which have become destitute because of the continued unemployment of heads of families has been so great (in spite of state and Federal aid) that most city and town boards of public welfare have been eager to extend Mothers' Aid to every applicant who could possibly qualify for it. The reason is that the Commonwealth pays part of the expense of every approved Mothers' Aid case. If the mother aided has a legal settlement within the

Commonwealth, the Commonwealth reimburses the town rendering the aid for one-third of the amount. (Approximately four-fifths of the mothers have legal settlements.) If the mother aided has no legal settlement, the Commonwealth reimburses for the full amount of aid. (Approximately one-fifth of the mothers have no legal settlement.) In all, the Commonwealth bears 46 per cent of the total cost of Mothers' Aid.

The benefit of Mothers' Aid extends not only to more than 4,100 mothers with more than 12,000 dependent children under sixteen years of age, but it also includes other members of the household—the incapacitated fathers who are living at home, the children over sixteen years of age who cannot secure work but who must nevertheless be housed and fed, and aged and destitute grandparents of the children, who have no other available refuge, and who receive little or no other support. Many of these elderly dependents were able to work and they contributed generously to the support of the family until the depression deprived them of their livelihood. It is safe to say that more than 20,000 individuals share directly in the benefits of the Mothers' Aid Law in Massachusetts today [p. 9].

Out of the depression we have learned some valuable lessons. . . . In several large cities where hundreds of applicants for aid swamped the main welfare offices with long lines of destitute men and women extending into the streets, the welfare work was re-organized and decentralized, and district offices were established. Under trained supervisors, the new workers were instructed, and they in turn trained other workers. During the rush, and as a means of relieving the congestion, Mothers' Aid recipients were not required to call at the welfare office each week. Checks by mail were sent to them. It then became necessary to employ more field workers to visit and check up on the mothers in their homes. This practice has become a fixed policy. It is the very thing we have been urging for a long time [p. 10].

9. The Michigan Situation in 1936

WILLIAM HABER AND PAUL L. STANCHFIELD: THE PROBLEM OF ECONOMIC INSECURITY IN MICHIGAN. A PRELIMINARY STUDY OF THE PLACE OF UNEMPLOYMENT INSURANCE AND OTHER SYSTEMATIC MEASURES FOR ECONOMIC SECURITY IN A STATE PLAN FOR MICHIGAN. A REPORT TO THE STATE EMERGENCY RELIEF COMMISSION (LANSING, AUGUST, 1936)

Michigan was among the pioneers in mothers' assistance legislation. The so-called mothers' pension law, which is a part of the juvenile court law, was first passed in 1913, and amended in 1915, 1921, 1923, and 1929.

The present law covers a wide variety of situations in which children may be deprived of their father's support. Allowances may be granted to children if the mother is widowed, unmarried, or divorced, has been deserted by her husband, if the husband is insane, or if the husband is an inmate of a state penal institution or an institution for the feeble-minded, epileptic, paralytic, blind, or insane, or is unable to work because of tuberculosis. In such cases, if the mother is financially unable to care for her children, the court may grant a cash allowance, paid from the general funds of the county, if investigation shows that the mother is a suitable guardian and that it will be best for the child to remain in the mother's custody.

The amount of the allowance is defined by the law as "the amount of money necessary for the mother to properly care for such child." The amount ranges from a minimum of \$2.00 per week to a maximum of \$10.00 per week for the first child, with an additional \$2.00 for each additional child.

Under the law, payment could be made only to the mother, and only so long as the children remained in her custody. Children who, by reason of the death of the mother, were left in the custody of the father or other relatives, or whose father was disabled by some physical disease other than tuberculosis, were not eligible for benefits, but must be provided for from the general relief funds of the township or county.

Michigan's law worked fairly well before the depression but the provisions for financing have proved very unsatisfactory during the recent years. The original law, as was true of many other states, was passed at a time when local governmental units were expected to

pay for all social services. The state government makes no financial contribution to the cost of mothers' pensions, which are paid entirely from the general funds of the individual counties. The limited resources of some counties, combined with the financial pressure of the last five years, made it impossible for many counties to maintain adequate standards and, in certain areas, led to the discontinuance of all payments. This collapse of provision for mothers' aid came at a time when the need was greater than ever before, since many mothers who might have remained independent in normal times had suffered through loss of investments and savings and the absence of normal work opportunities.

As early as November, 1933, 34 counties which had formerly granted pensions had discontinued all grants. In June, 1931, these same counties had given assistance to over 1,600 families containing 4,300 eligible children. During 1934, at least seven other counties discontinued the payment of pensions. Partial payments have been resumed in a few counties but a survey by the State Welfare Department showed that on July 1, 1935, 31 counties were making no payments . . . [pp. 74-75].

Cases which are eligible for mothers' pensions have, in these counties, been dependent on relief through the Emergency Relief Administration or local poor officials. About 5,000 such cases are on the emergency relief rolls.

Even where pensions were not completely discontinued, the amounts granted were often totally inadequate. A survey made by the State Welfare Department early in 1934 showed that the average grant per child had fallen to \$1.75 per week, and that in many counties the average grant was less than \$1.25 per child. In many individual families the grant was as low as 40 cents per child per week. A large proportion of all mothers' pension cases were receiving less than the legal minimum of \$2.00 per week per child set by the Michigan law.

The average allowance for a mother with one child was only \$2.33 per week, and for families of all sizes the average grant was \$2.78 per week. These amounts represent a marked decline from the pre-depression figures. The average monthly grant per case was \$51.00 in 1921, \$37.04 in 1931, but only \$12.50 per family in December,

1933. Outside of Wayne County the average grant has been low. Recent surveys show that the average grant per child, for the state as a whole, was \$9.99 in the year ending June 30, 1932, \$9.70 in 1933-34, and \$9.46 in 1934-35. Outside of Wayne County the corresponding averages were \$8.13, \$8.05, and \$6.65. Although Wayne County contained only one-third of the mothers' pension cases receiving aid during 1934-35, its expenditures for mothers' pensions represented more than 60 per cent of the state total.

The discontinuance of pensions in some counties and the extremely small grants paid in many other counties have been sufficient to defeat the primary purposes of the mothers' pension law. The survey made in 1934 showed that many mothers with dependent children had been forced to exhaust their credit, to decrease their food budgets beyond the danger point, and to go without necessary medical care. In 44 per cent of the cases, the mother had been compelled to find outside work. Many families were seriously in debt and many of the children were suffering from malnutrition.

The fact that emergency relief has also been needed by many cases which were receiving mothers' pensions has resulted in widespread duplication of administration costs, since investigation, case supervision, and financial records have been maintained by both agencies. In a few counties, the board of supervisors has eliminated this duplication by making the Emergency Relief Administration responsible for the expenditure of the appropriation for mothers' pensions.

Many of the difficulties of Michigan's mothers' pension system during the depression years may be attributed to the fact that the law is not mandatory upon all counties and the fact that the county is too small a taxing unit to permit adequate standards in all parts of the state. The law states that cash allowances "may" be granted, leaving it to the option of the court to determine whether this shall be done. There are no provisions to prevent the discontinuance of payment and the law makes it possible for individual counties to pay pensions to some mothers and to refuse them to others who are equally eligible in terms of the state act. The survey of 1934 showed, for example, that 17 counties refused to grant pensions to the chil-

dren of divorced or unmarried mothers and that many counties refused aid to families containing only one child.

Failure to pay pensions and restrictions of eligibility may be attributed in most cases, to the lack of available funds. Special aid from state and Federal funds is necessary to raise the standards in areas of limited financial ability. As Grace Abbott, Director of the United States Children's Bureau, has said, "The necessity for a larger taxing unit has been demonstrated. A state-wide program, and especially a state equalization fund, has, therefore, been advocated by those who have studied the development and possible usefulness of mothers' pensions" [pp. 76-77].

The State Emergency Relief Administration under the general powers vested in it by law is attempting to work out a temporary plan for administering aid to dependent children through special divisions of the County Relief Administrations which will meet the requirements of the Social Security Act without waiting for new legislation. Even if this attempt proves successful, there will be need for permanent legislation, that will make aid for dependent children a part of a unified state welfare plan. The following provisions seem desirable:

1. A definite appropriation of state funds for this purpose should be made. These state funds should probably be distributed on a dual basis, a part going to the various counties in proportion to local funds spent for care of dependent children, and a part being used as an equalization fund to finance adequate allowances in counties where the need is greatest or the financial limitations most severe.
2. Administration should be supervised by a unified department of public welfare and the local functions of investigation, case work, and records should be carried on by the same local unit which handles unemployment relief, old age assistance, and other public aid.
3. The amount of the pension in each individual case should be determined on the basis of individual need (total needs less available income of the family).
4. The plan for aid to dependent children should be based on a definition of eligibility much broader than that set by the Juvenile

Court Law. A broad definition taking full advantage of the provisions of the Social Security Act would include nearly all families which contain children who are deprived of parental support or care because of the death, continued absence, or physical or mental disability of either parent . . . [pp. 77-78].

COURT DECISIONS ON MOTHERS' AID LAWS

10. Is a Mothers' Aid Law Constitutional?

A. DENVER & RIO GRANDE RAILROAD CO. v GRAND COUNTY 51 Utah 294 (1917)

Gideon, J. . . . Respondent contends that such statute [Dependent Mothers' Act, *Laws 1913*, chap. 90] authorizing the assessment, levy, and collection of a dependent mothers' tax is unconstitutional and void for the reason that it takes private property for other than a public purpose; that the act is discriminatory and favors a class, and is therefore in violation of Article 14, sec. 1, of the federal Constitution, and of Article 1, sec. 7, of the Utah Constitution. Respondent also contends that the tax is illegal and without authority as being in excess of the taxing limit fixed by *Comp. Laws 1907*, sec. 2593.

We shall consider these contentions in the order named: By Article 6, sec. 1, of the Constitution, the legislative power of the state is vested in the Legislature thereof. It is provided by Article 13, sec. 3, of the Constitution, that the Legislature shall provide by law a uniform and equal rate of assessment, and shall prescribe by general law such regulations as shall secure a just valuation for taxation of all property, etc. Section 5 of the same article gives to counties, cities, towns, and other municipal corporations the power to assess and collect taxes for all purposes of such corporations, and is in the following language: "The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may by law vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation."

It is conceded that the phrase, "for all purposes of such corporation," includes every object or purpose for which a tax may be

legally levied. In other words, the expression is synonymous with the phrase generally used by text-writers and courts, "public purposes." We have, then, to determine in this case whether the object for which the tax in question was levied, as set out in the act, can be upheld as for a "public purpose."

The determination of that question is not without difficulty. The authorities on such or like questions are not in harmony. What may or may not be termed a "public purpose" is not easily defined, and no definition has as yet been framed that will fit all conditions or provisions of legislation. That the objects of the act now under consideration were beneficent, and in the judgment of the lawmakers to the best interests of the state, will not be questioned; and yet the determination of the legality or constitutionality of the act must be based upon some recognized rule of construction that would authorize the Legislature to appropriate the public funds for the purposes mentioned in the act. We are not prepared to hold that the Legislature might not provide for the appropriation of public funds for the purposes stated. To do so would be to hold that the Legislature has exceeded its authority, as that authority is limited by the common acceptance of the meaning of the phrase "public purposes." It will be conceded, we take it, that the proper rearing and bringing up of children, their education, their moral welfare, can all be subserved better by giving to such children the companionship, control, and management of their mothers than by any other system devised by human ingenuity. The object of the act is to provide means whereby mothers who are otherwise unable may be enabled to give such attention and care to their children of tender years as their health, education, and comfort require. The act further provides that no such money shall be appropriated or given unless the mother is a fit person morally and physically to be intrusted with the rearing of young children, and that only during the years when the children are unable to determine right from wrong or to earn a livelihood. The act having for its object the better care and training, mental and physical, of children who are to become the citizens of the state, would at least leave the constitutionality of such act doubtful, and it is the duty of courts in determining the constitutionality of any act to resolve every doubt in favor of its constitu-

tionality. We are not prepared to hold that the act, in effect, does not define and declare a policy of the state, nor that it is not within the province of the Legislature to so define and declare a state policy. Having in mind the public welfare by assisting in surrounding children of tender years with home associations, with the care and nurture of their natural protector, the mother, the Legislature, by this act, has determined that to be a policy of the state. Such being the object of the act, this court would not be justified in declaring the act invalid and that the funds so used are not used for a public purpose.

The principle or rule that should guide the court in determining the constitutionality of any legislative act is lucidly and well stated by the Supreme Court of Missouri in *Ex parte Loving*, 178 Mo. 203, 77 S.W. 509, quoting from other decisions of that court in the following language:

It is the duty of the courts to uphold a legislative act unless it plainly and clearly violates the Constitution, and, if its language is susceptible of a meaning that will remove the objections to its validity, such interpretation should be adopted. "A legislative intent to violate the Constitution is never to be assumed if the language of the statute can be satisfied by a contrary construction." Endlich on the Interpretation of Statutes, sec. 178. It is our duty to uphold the act unless it plainly and clearly violates the fundamental law of the state, and if its language is susceptible of a meaning that will remove the objections to its validity, such interpretation should be adopted.

. . . . It may be contended that to leave the power to levy taxes for the purposes mentioned in this act is removing practically every limitation upon the taxing power of the Legislature. That does not necessarily follow; but should the time ever come when the electors, through ignorance or want of sufficient interest in their public officers, fail to check any extravagance or waste of the public funds through acts of their chosen representatives in the Legislature, then any limitation that the court might attempt to throw around the right of the taxing power would prove abortive and be easily evaded. The chief safeguard against extravagance or marked delinquency of any system must be found in the knowledge and rectitude of the people, and in the honesty and intelligence of their representatives.

We must, therefore, while admitting the question is not free from

doubt, resolve that doubt in favor of the power of the legislature to authorize the expenditure as provided in the act in question.

What has been said above answers the second objection used by respondent against the validity of the tax in question.

The further contention that the tax is excessive, as being in excess of the maximum allowed by *Comp. Laws 1907*, sec. 2593, cannot be sustained. . . . It is a matter of common knowledge, and one that the Legislature must have known and had in mind when it enacted the law complained of, in 1913, that every county in the state needed and had been levying a tax for the purposes mentioned in section 2593, *supra*, up to the full limit permitted thereby. Therefore, it must have been the intention of the Legislature when it enacted the law directing the county commissioners of each county to provide funds, etc., that such commissioners should provide such funds by the only legal means within their power, namely, levying an additional tax on the property in such county. If any other view be taken, then we must assume that the Legislature intended the act in question to be stillborn and of no effect. That we may not do. . . .

We are not unmindful that many courts of the highest authority, and whose judgments are entitled to great weight and respect, have stated rules or elucidated principles which might, by analogy, seem to hold contrary to the views herein expressed; but considering the purposes of the act, and the safeguards thrown around the appropriation of the funds, we do not feel justified in holding it beyond the power of the Legislature.

It follows from the foregoing that the case should be reversed and remanded to the district court, with directions to make conclusions of law in accordance with this opinion and enter judgment dismissing the complaint. Such is the order. Appellant to recover costs.

B. IN THE MATTER OF THE PETITION OF MRS. ROSE SNYDER FOR
SUPPORT OF MOTHERS

93 Washington Reports 59 (1916)

FULLERTON, J. The act of March 24, 1913 (*Laws 1913*, p. 644; 3 Rem. & Bal. Code, sec. 8385—1 *et seq.*), commonly known as the Mothers' Pension act, provided for an allowance out of the county

treasury to certain destitute mothers whose husbands were dead, or were inmates of penal institutions, or who had been abandoned by their husbands and such abandonment had continued for a period of more than one year. In 1915 (*Laws 1915*, p. 364; Rem. 1915 Code, Sec. 8385-1 *et seq.*), the act was repealed and a new act passed which provided for allowances only in cases where the husband is dead or confined in a penal institution or insane hospital, or whose husband, through total disability, is unable to support his family; making no provision for a case of abandonment.

While the act of 1913 was in force, the petitioner, Rose Snyder, made application to the proper authorities of King county for an allowance, basing her claim upon the fact that she had been abandoned by her husband, which abandonment had continued for more than one year. Her claim was allowed, and she was paid a fixed allowance until the repeal of the statute by the going into effect of the act of 1915. After that time she applied by petition to the juvenile court for a renewal of the allowance, again basing her claim upon the ground that she had been abandoned by her husband. The petition was disallowed and a judgment rendered dismissing the application. This appeal is prosecuted therefrom.

The appellant attacks the law of 1915 on the ground of constitutionality. She argues that it contravenes sec. 12 of Art. I of the state constitution, which provides that no law shall be passed granting to any citizen or class of citizens, or corporations other than municipal, privileges and immunities which upon the same terms shall not equally belong to all citizens or corporations; and, also, that part of the Fourteenth Amendment to the Constitution of the United States which provides that no state shall make or enforce laws which shall abridge the privileges or immunities of the citizens of the United States or deny to any person within its jurisdiction the equal protection of the laws. The specific objection is that the law makes an arbitrary selection of its beneficiaries, since it includes indigent mothers whose husbands are dead, or incarcerated in penal or insane institutions, or whose husbands are unable because of total disability to support their families, but excludes mothers whose husbands have abandoned them.

In support of the objections, her attorney presents an able brief

on the principles to be applied by the courts in determining whether or not an act of the legislature falls under the constitutional ban of class legislation. But while we agree with his presentation in the abstract, we cannot think the principles contended for have application here. In the first place, the act of 1913 did not provide pensions for all classes of indigent mothers, and is, in consequence, as susceptible to the constitutional objection of class legislation as is the act of 1915. Any rule of law, therefore, which would destroy the act of 1915 on this ground would destroy all previous legislation on the subject, thus leaving the applicant utterly without remedy in any event.

In the second place, the state may care for its indigent and poor in any manner it pleases. What scheme will be adopted is wholly within the discretion of the legislature. That body may provide, without violating any provision of the constitution, that certain classes shall be cared for by regular allowances from the county treasury, while others may receive intermittent allowances, or be cared for at almshouses or poor farms maintained for the purpose. No individual or class of individuals can acquire a vested right to be cared for in any particular manner. Indeed, the state is under no legal obligation to care for its poor at all. While it undoubtedly has a moral obligation to do so, there is no such obligation as can be enforced in law. Such relief as it does provide is legally in the nature of a largess or bounty, which may be discontinued at the legislative will.

In the case before us, the legislature probably discontinued pensions to indigent mothers whose husbands had abandoned them because it concluded that to grant such pensions was not in accord with sound public policy. But whatever may have been its motive, there is no question as to its right and power to discontinue such pensions, and no former beneficiary can legally complain. The judgment is affirmed. MORRIS, C. J., MOUNT, and ELLIS, JJ., concur.

CHADWICK, J. (*concurring*). The suggestion that the act of the legislature amending the Mothers' Pension bill violates Art. 1 sec. 12 of the state constitution, and the Fourteenth Amendment to the Constitution of the United States, will not bear discussion. Those sections of our constitutions apply only to rights sounding in con-

tract, or which become vested rights under some rule of the common law or a statute which partakes of the nature of a contract.

Vested rights never grow out of gratuitous favor. Only those who can ground their claims in some contract, express or implied, or upon some right guaranteed by the common law, are heard to assert such rights. Neither element exists in this case. *Whitaker v. Clausen*, 57 Wash. 268, 106 Pac. 745, 107 Pac. 832.

No pensioner has a vested right to his pension. Pensions are the bounties of the government, which Congress has the right to give, withhold, distribute, or recall, at its discretion. *United States v. Teller*, 107 U.S. 64-68.

The right of recovery being dependent upon the statute, it is within the power of the legislature to limit the amount of the recovery to any sum it sees fit. *Longfellow v. Seattle*, 76 Wash. 509, 136 Pac. 855. . . .

C. CASS COUNTY ET AL. v. BESSIE R. NIXON
35 North Dakota 601 (1917)

GRACE, J. . . . All the facts involved in this case are stipulated or conceded by the respective parties to the action. Among the controlling facts so stipulated or conceded are those admitting the indigency of the mother, the minority of the children of such mother; that such minor children are under the age of fourteen years; and that the county court, after investigation of all the facts of the case, made its order allowing certain amounts of money for the support and maintenance of each child; said amount to be paid to the mother for such purpose; and that she was a fit and proper person to whom to pay it for the support of such children.

The questions involved and presented upon this appeal are purely questions of law. The dominant question of law here presented is: Is chapter 185 of the *Session Laws 1915* unconstitutional? . . . Section 111 of the state Constitution, so far as it is applicable to this case, is as follows, to wit: "The county court shall have exclusive original jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of accounts of executors, administrators and guardians, the sale of lands by executors, administrators and guardians and such other probate jurisdiction as may be conferred by law." Chapter 185, *Session Laws 1915* (commonly called Mother's Pension Act) is not in conflict with section 111 of the state Constitution. The persons, in fact, the real and actual recipients of the protection and benefits conferred

by chapter 185, *Session Laws 1915*, are indigent minors of tender years who are placed in such condition that by reason of the poverty of the mother and her inability to supply such minors with those absolute necessities of life, such as proper clothing to protect the bodies of such infants from the wintry winds of this northern region, where climatic conditions at certain seasons become so exceedingly frigid; and the indigent mother not having the financial ability to procure fuel for the home of such infants, or food to appease their pangs of hunger, and from these causes the very existence of such children, their moral welfare, their health and physical development become greatly endangered. These minors, mere infants, cannot supply themselves. Their indigent mother, reduced to the depths of penury and want, cannot do so and the lives of these minors of tender years become imperiled unless the state takes an interest in this regrettable condition, too frequently found in this land where the necessities of life are produced in such abundance.

The laws of the state regarding the persons or estates of minors were enacted by reason of the authority found in section 111 of the state Constitution, and jurisdiction in matters concerning either the person or estates, or both, of minors, was given to the county court. The law under consideration is chapter 185, being one which involves the care and protection of estates of minors of very tender years, and the care of the estate of such minors being one of the cardinal duties of county courts, chapter 185 having appointed the county court to perform and execute the duties set forth in chapter 185 toward and concerning the estate of such minors, the rendition of said duty by the county court toward such minors is the exercise of a judicial function, or the exercise of a power largely partaking of the nature of a judicial function, and is not, properly speaking, an administrative function. The exact line of demarcation where judicial functions end and administrative functions begin is not easily discernible, and is fraught with many difficulties, just as perplexing as it is to accurately determine the exact line of demarcation which segregates the animal from the vegetable kingdom, and as we draw near the extremity of one the shadows of the other, figuratively speaking, are falling across our pathway. The duties prescribed by chapter 185 for the county court are judicial and not

administrative in their intent, nature, and effect, and are in the nature of guardianship functions, the persons to be assisted and protected being minors. . . . Assuming that chapter 185 had provided that where mothers were indigent and thereby unable to care for her minor children under fourteen years of age, said children should be taken away from the mother by the state, and a guardian appointed for them and an allowance similar in nature, amount, and terms to that in chapter 185 provided for the use, benefit, and protection of said children, thus creating an estate for such minors, then there could be no doubt of the county court's authority and jurisdiction in such case, nor that its function therein would be other than judicial. The same meaning and intention is in chapter 185, except the mother, the natural guardian when fit, is left in charge of such minor children and infants of such tender years, for many excellent reasons. . . .

In the construction of a statute, as a general rule, the meaning and intent of the legislature should be sought from the whole law, and not from the title of the act alone. Perhaps, in special cases, we may look to the title alone, as where there is the contention a law is unconstitutional on the ground that the title of the law embraces more than one subject. The laws enacted by the legislature should be upheld where possible, and unless such law is in direct conflict with some express provision of the state or Federal Constitutions, it should be upheld, but where a legislative act does conflict with an express provision of a state Constitution, or an express provision of the Federal Constitution, such legislative act should and must be by the courts held to be unconstitutional and therefore inoperative and void. The authority of the courts to declare legislative acts void is not an express power, granted to courts by the state Constitution, and unless a legislative act contravenes an express provision of our state Constitution it should be upheld, and, conversely, if the legislative act does contravene an express provision of our state Constitution or the express powers of a Federal Constitution, it should be, and must be, held to be unconstitutional and void. An observance of this rule will operate to preserve to each division of government its respective functions; that is, the executive branch will exercise jurisdiction and power only in the proper

execution of laws and proper enforcement of laws; the legislative branch, jurisdiction, and power only in the enactment of laws, and the judicial branch, jurisdiction, and power only in the interpretation of laws. The intent of the legislature in enacting into law chapter 185, is founded upon sound, most progressive, and scientific principles of public policy, and the law is a monument of credit to the legislature which enacted it. . . . In conclusion, we also may say, we are convinced the duties imposed upon the county court by chapter 185 are judicial in their nature, but if to some extent they appear to be and in a small degree partake of the nature, in some slight respects, to that of administrative powers, yet nevertheless the granting of the exercise of these powers to the county court in the case here presented in no way contravenes the expressed provisions of section 172 of the state Constitution.

Even if the duties prescribed for the county courts in chapter 185 should be conceded in some respects to consist and be of the nature of administrative duties, can it be said that the legislature, standing as the direct representative of the people—of the whole public—have not the authority to delegate those powers to the county court when it is to the direct interest of public policy and the welfare, life, and perpetuity of the state itself to do so, and where, as in this case, the power delegated in no way directly contravenes section 172 of the Constitution, either expressly or indirectly. . . .

We think, for the foregoing reasons, on the whole the law is constitutional and grounded in the deepest interests of the public good and welfare, and is in the interests of the protection and perpetuity of the state itself. For the reasons stated, the order and judgment of the District Court of Cass County, N.D., affirming the order of the County Court of Cass County, making an allowance to respondent, Bessie R. Nixon, is affirmed; and the order of the District Court of Cass County, N.D., affirming the order of said County Court overruling the demurrer interposed by appellants to the petition of respondent, is also affirmed.

BRUCE, C. J. I concur in the opinion of Mr. Justice Grace. I merely desire to add that in my opinion the word "probate," as used in the clause, "such other probate jurisdiction as may be conferred by law," does not merely apply to the proof of wills, but is

much more comprehensive in its terms, and is intended to include such powers as are usually exercised by probate and county courts. See Bouvier . . . and the various editions of the statutes of North Dakota in which the term "Probate Code" has been used, and as so used has included much more than the mere proof of wills.

CHRISTIANSON, J. (*concurring specially*). I concur in the result announced in the foregoing opinion. It is conceded by counsel for appellant that public moneys may be lawfully expended for pensions for indigent mothers. The sole complaint is that the legislature chose the wrong tribunal or board to administer the law.

I do not believe that the duties to be performed under the Mother's Pension Act are necessarily embraced within that class of governmental functions designated in the Constitution as the "fiscal affairs" of the county, and required to be performed by the board of county commissioners. But I am not wholly satisfied that the duties imposed upon the county court fall within the "probate jurisdiction" conferred upon county courts by section 111 of the state Constitution. It seems to me that the duties imposed are neither wholly administrative nor wholly judicial, but rather that they are of such nature as to permit the legislature to choose such instrumentality as it deems best to carry out its will. . . .

The law is presumed to be constitutional. This presumption becomes conclusive unless it is shown that the enactment is prohibited by the Constitution of the state or of the United States. And the party asserting the statute to be unconstitutional must point to the particular constitutional provision violated. . . .

11. Is Mothers' Aid Poor Relief?

A. STATE *ex rel.* LILLIAN TIMO *v.* JUVENILE COURT OF WADENA COUNTY
188 Minnesota 125 (1933)

STONE, J. Appeal from a judgment of the district court, affirming an order of the probate court (reviewed by certiorari), denying relator's petition for a mother's pension. The probate court was functioning as a juvenile court under 2 Mason, 1927, sec. 8636 et seq. . . .

For some years before April 6, 1931, petitioner and her husband, citizens of the state, resided in the village of Crosby in Crow Wing county. Both their residence and their settlement under the poor

laws were established there. On that date, petitioner, her husband, and their six children moved from Crosby to the village of Menahga, in Wadena county, where Mr. Timo had bought a "small place" on executory contract of purchase. It was his intention and that of relator, his wife, to make it "their permanent home." That remained the intention of both until the death of the husband a few months after, and of petitioner at the time this proceeding was commenced. All the children who are of school age regularly attend school. They are all dependent. That condition is not due to any "neglect, improvidence, or other fault" of petitioner. The family is without means of support other than their own labor, except the equity in the home, which is found not to exceed \$300 in value. There are no relatives able to assist in support of the family. Petitioner is a fit and proper person to have custody of her children, whose welfare "will be subserved by permitting them to remain in the custody of their mother." It was further found "reasonably necessary that petitioner be allowed the sum of \$50 per month to enable her to bring up said children properly in her home."

It was assumed below that inasmuch as the family, in April, 1931, had its "settlement" for purposes of poor relief in Crow Wing county, and thereafter received aid therefrom, and so could not have acquired another "settlement" anywhere in the state during that year (*G.S. 1923* [1 Mason, 1927] sec. 3161; *In re Leslie*, 166 Minn. 180, 207 N.W. 323), that it did not acquire residence in Wadena county, either when the Timos removed there or at any other time. On that ground both decisions below went against the petitioner.

Settlement for purposes of poor relief and legal residence ordinarily do, but need not, coincide geographically. The terms are not synonyms. Settlement for poor relief is defined and restricted by statute. Residence alone does not always make settlement. It is not enough to entitle a poor person to relief, other than temporary, in the town or county of residence at the time being. There must be the added elements necessary to convert that residence into settlement under the poor laws.

As pointed out *In re Settlement of Skog*, 186 Minn. 349, 243 N.W. 384, the mother's pension law differs from the poor relief law both as to coverage and purpose. The conditions precedent to the two

sorts of relief and the standards of need of the beneficiaries are by no means the same. Although the money may, but need not, come from the poor fund (*G.S. 1923*, sec. 8672, as amended, 2 Mason, 1927, *ibid.*), the mother's pension statute is no part of our poor law, although in result it provides public aid to the needy. The beneficiaries are the children rather than the mother. It contemplates an investment in youth, their education and proper upbringing, and so is prospective in operation, benefit, and social return to a degree not found in the poor laws. It is the newer scheme, and so if there be impingement of one on the other, the older must yield. Settlement is necessary for the relief of a poor person, but is of no moment in relation to a mother's pension. In the latter case residence, as distinguished from settlement, is essential, and a year's residence is enough. There is in this case the prerequisite year's residence in Wadena county. The other jurisdictional facts found in plaintiff's favor, the application should have been granted.

There may be injustice and questionable logic in permitting a family having a settlement in one jurisdiction and drawing relief from its poor fund to move to another and after a year's residence acquire there a right to relief by a mother's pension. But we cannot affirm on that ground. The legislature is at liberty to ignore logic and perpetrate injustice as long as it does not transgress constitutional limits. So if the law as it stands results in injustice, it is for the legislature to remove the cause. It must be done by amendment rather than construction, there being no ambiguity in the later law....

The fact that the settlement of the family, for purposes of poor relief, may remain in Crow Wing county is not a bar to the granting of the petition for a mother's pension from Wadena county. But the right to or receipt of poor relief from Crow Wing county is a factor to be considered in determining the amount to be allowed as a mother's pension. The right to such an award in one county does not relieve another county from its obligation, if any, to furnish poor relief. The latter may be equitably the prior and primary obligation. The extent to which the amount to be awarded petitioner is affected by the continuance of the family settlement in Crosby for poor relief purposes is the only thing requiring further

consideration below. The decision should be without prejudice to whatever proceedings the future may bring to determine the "settlement" of the family and the right, if any, to have them removed from Wadena county, under 1 Mason, 1927, sec. 3161-1, *et seq.* The issues that will then arise are not involved in this case, whatever collateral effect the one proceeding may have on the other.

The judgment must be reversed and the case remanded for further proceedings not inconsistent with this decision. So ordered.

B. ADAMS COUNTY, PETITIONER v. A. R. MAXWELL, JUDGE, RESPONDENT
202 Iowa 1327 (1927)

VERMILION, J. This is an original proceeding in this court by a writ of certiorari, issued by a judge of this court on the petition of Adams County, to review the action of the respondent, a judge of the district court of Adams County, in ordering the payment by the petitioner to one Dolly Simmons of what is commonly called a widow's pension of \$2.00 per week, to aid her in the support of her four children under 16 years of age. . . .

The following facts are shown by the record: Dolly Simmons and her husband, George Simmons, with their children, had resided in Taylor County. They had received aid from the poor fund in that county. They moved to Adams County in April, 1924. The husband and father continued to reside in Adams County until his death in December, 1925, and the widow and children have resided there continuously since their removal from Taylor County. On February 3, 1925, the board of supervisors caused to be served on George Simmons a written order or warning to depart from Adams County. A like warning addressed, however, to Ellen Simmons, was served on Dolly Simmons on January 19, 1926. . . . The application of Dolly Simmons for aid in the support of her children under sixteen years of age was filed on January 11, 1926.

Section 3641 provides that, "if the juvenile court finds of record that the mother of a neglected or dependent child is and has been a resident of the county for one year preceding the filing of the application, and is a widow and a proper guardian, but, by reason of indigency, is unable to properly care for such child, and that the welfare of said child will be promoted by remaining in its own home,"

the court may, on prescribed notice to the chairman of the board of supervisors, determine the amount, not exceeding \$2.50 per week, necessary to enable the mother to properly care for the child, and the amount shall be caused by the board of supervisors to be paid from the county treasury.

This section requires the court to find that the applicant is, and has been for a year previous, a resident of the county. It is worthy of note that provision for the payment by the county to an indigent widow of a sum to aid in the support of her dependent children was originally enacted by the thirty-fifth general assembly (Section 254-a20, *Code Supplement, 1913*) as an amendment to Section 8, chap. 11, *Acts of the Thirtieth General Assembly*, providing for a juvenile court, and relating to the treatment and control of dependent, neglected, and delinquent children. The only reference to the *locus* in the original act is in Section 3 (Section 254-a15, *Code Supplement, 1913*), providing that a reputable resident of the county having knowledge of a child in his county that appears to be dependent, neglected, or delinquent may invoke the jurisdiction of the court in respect to such child. The first act authorizing aid to an indigent widow (chap. 31, *Acts of the Thirty-fifth General Assembly*) contained no reference to the residence of the widow or the children. By Chapter 252, *Acts of the Thirty-ninth General Assembly*, it was first provided that a widow, to receive such aid, must be "a resident of the county where aid is applied for." The present statute, as we have seen, requires that she shall have been a resident of the county for one year.

The history of the legislation is of some importance, as showing that it is not an elaboration of the provisions made for the support of paupers at public expense, but is, both in fact and in purpose, an integral part of statutory provisions designed to secure better control of, and better living conditions for, neglected, delinquent, or dependent children, to the end that they may not become paupers or criminals, but may have opportunity to become useful members of society. It is apparent, too, that the present requirement of one year's residence in the county has been the result of gradual changes and was doubtless made to meet the need of greater certainty in the law.

That there is an essential difference between residence and a legal

settlement, within the meaning of the statutes relating to the support of paupers, is apparent from a consideration of those statutes themselves. By Section 5311 it is provided an adult may acquire a settlement in the county of his residence by residing there one year, without warning to depart. Under Section 5315 a person cannot, after such warning, acquire a settlement, except by the requisite residence of one year without further warning. It would seem that one might be a resident of a county for years, and yet, by reason of successive and timely warnings to depart, never acquire a legal settlement there.

The Legislature has seen fit to make residence for one year on the part of the widow, and not legal settlement under the Pauper Acts, requisite to an allowance of public aid in the support of her children, under Section 3641.

That the applicant, Dolly Simmons, was, at the time of making application for aid, and had been, for more than a year, a resident of Adams County, is undisputed. Whether, by reason of the warning given her husband, she had acquired a legal settlement in the county was wholly immaterial.

The writ will be annulled.

C. *In re* APPLICATION OF UNA WALKER FOR MOTHERS' PENSION
49 North Dakota 682 (1923)

JOHNSON, J. . . . The facts are stipulated by the parties, and, so far as material, are as follows: Mrs. Walker petitioned the county court of Renville county for a Mothers' Pension under the provisions of chapter 185, *Sess. Laws 1915*. The petition was granted, and a pension awarded. At the time she made her application, she had been a resident of Renville county for more than one year, as required by the act, and she brought herself clearly within its terms and purpose. On or about April 10, 1920, Mrs. Walker moved from Renville county to Ramsey county, North Dakota, where she has since been working as a housekeeper. Her children have at all times remained with her since she moved to Ramsey county. On or about the 14th day of April, 1921, the county court of Renville county, without notice to Mrs. Walker, made an order discontinuing the payment of pension, effective on and after May 1, 1921, for the

reason that she had removed from Renville county, and had been absent therefrom for more than one year. . . .

The only question on this appeal is whether a mother, to whom a pension has been granted, under chapter 185, *Sess. Laws 1915*, loses the right thereto upon removing from the county where the pension was granted, and continuing to reside in another county, but within the state for a period of one year or more. There is nothing in the stipulation of facts to indicate that her removal from Renville county is with the intention of permanently establishing a residence outside thereof. The legal effect of such permanent change of residence upon the right to a continuance of a mothers' pension is not an issue on this appeal and is not here decided.

The decision turns upon the construction to the given chapter 185, *Sess. Laws 1915*, commonly known as the Mothers' Pension Law. . . .

This act is evidently of a remedial nature and should be liberally construed. It was undoubtedly the legislative purpose to provide a remedy that would mitigate or remove the evils presumed to result when children are reared in poverty, neglect, or immoral surroundings, and away from the presumptively beneficent influence of home and parental care. It is a statute passed in the interest of a better citizenship and the purpose of the act should not be frustrated by narrow construction. Primarily, the beneficiaries of the law are children. It is not in any sense a poor relief act to aid a certain class of indigent adult persons. Mothers are not, by this act, put into the class of paupers just because the legislature deems it wise to assist them in maintaining a home in which to bring up children and to enable them to supervise the training and education of their offspring. The pension awarded under the law is rather in the nature of a compensation for services rendered the state in bringing up its future citizens in proper surroundings and giving them the proper care. . . .

We do not believe that it was the intention of the legislature to impose any burdensome restrictions upon the mother in her endeavors to bring up and educate her children properly. If the mother could better her economic condition by moving from one county to another within the state, and bring her children, the beneficiaries

under this law, into more desirable surroundings and give them improved educational advantages thereby, there is nothing in the language, reason or purpose of the act that would justify a holding that such removal should deprive her of a right to the pension or the children of its benefits. . . . It is clear to us, in view of the expressed purpose of the law, that the legislature did not intend that there should be any interruption in the compensation to the mother for the benefit of her children due to the single fact that economic necessity or considerations of prudence impelled her to move from one county to another within the state. The interest of the state in the welfare of its future citizens under this law is not measured by the boundaries of political subdivisions. Through agents duly appointed, the law makes ample provision for control, by the officers of the county which pays the pension, over the manner in which relief may be administered under the law. The applicant must satisfy the county court that she is not a mere transient, but is in fact a resident of the county which she asks to help her rear her children. Having once convinced the proper authorities that she is a person entitled to a pension under the law, that right follows her regardless of her choice of temporary residence within the state, unless forfeited by breach of express or implied conditions, or lost because the necessity for aid has ceased to exist. The law nowhere, neither expressly, nor by necessary implication, restricts her liberty of movement or choice of residence; the only object the state is seeking to advance—the welfare of the children—is best served by giving the mother the utmost freedom of opportunity to reside at that place in the state where the conditions, on the whole, are most advantageous for herself and the objects of the state's bounty. To hold otherwise would be to read into the law a restriction not warranted by its language and, to some extent, to defeat the beneficent purpose the legislature intended to accomplish. . . .

A mother of dependent children, whose husband has just died, may find it utterly impossible to continue in the business or to remain in the place her husband selected. Suddenly thrown upon her own resources, she must fight the battles of life with the means at her command. She must look for work and a place to live and rear her children. Section 5 of the act prescribes the condition on which

the allowance of the pension, when once made, may be suspended or discontinued before the child attains the age of fourteen years, and that is when the allowance made is failing of the purpose intended by the law, that "dependent children may grow into useful citizens." Temporary removal from one county to another does not in any manner tend to defeat this purpose and is not enumerated as a condition justifying a discontinuance of the allowance. It would be a perversion of justice to read into the law any such condition or limitation.

The order of the trial court is affirmed.

12. Divorce and Mothers' Aid

In re COUNTY ALLOWANCE FOR KOOPMAN CHILDREN
146 Minnesota 36 (1920)

BROWN, C. J. Proceedings in the juvenile court of Hennepin county under the provisions of chapter 223, p. 337 *Laws 1917*, known as the Mother's Pension Law for the relief of certain dependent children. From an order vacating a former order granting the relief the applicant appealed.

The facts are not in dispute. The alleged dependents are the minor children of Charles Koopman and Gunde Koopman, husband and wife, and are in the care and custody of the latter, the mother. The mother and children were deserted and abandoned by the husband and father, and he is now under indictment therefor and a fugitive from justice. The poverty of the mother and actual dependence of the children is not questioned, no support can be had from the husband, and the right of the mother to the relief provided for by the statute is made clear by the findings of the trial court, unless the fact that she procured a divorce, presumably on the ground of desertion, renders the statute inapplicable. We do not think the divorce should have that effect.

The design and purpose of the statute is the promotion of the welfare of dependent minor children, whose parents from poverty or other sufficient reason are unable properly to care for them. . . .

The statute is remedial in character and purpose and should not be construed strictly. The manifest intention of the legislature in its enactment was in a measure to remedy some of the evils naturally

to result to infant children who in their youth are exposed to the hardships and harmful temptations incident to poverty, and to aid in their nurture, training and education, to the end that they may come to years of maturity sound in body, pure in mind, and in position to become useful members of society. To effectuate that purpose the statute should be liberally construed and applied. On its face the statute applies to children of a lawful family relation and not to illegitimates, for such are provided for by other statutes. The fact that the wife and mother has found it necessary for the protection and comfort of herself and children to procure a divorce from a wrongdoing and neglectful husband and father should not take the children of the marriage without the statute, for the state is as much concerned in their welfare as in the welfare of those whose parents have not thus been separated. Manifestly the legislature did not intend to discriminate against children so situated, and we do no violence to the rules of statutory construction in ascribing to the statute a purpose to provide for all dependent children sustaining the usual family relations in life. In that view the word "husband" wherever used in the statute should be construed to mean and refer to the husband and father upon whom the law casts the burden of supporting his children. The divorce may relieve him from the legal obligation of supporting his wife, but not from the duty of supporting his children, even though the divorce judgment awards their custody and control to the wife. . . .

We construe the statute accordingly, from which it follows that the order granting relief to the mother, which was vacated by the order appealed from, was right and should stand.

The order appealed from is therefore reversed.

13. Mothers' Aid and Presumption of Death

COMMONWEALTH *ex rel.* TRUSTEES OF MOTHERS' ASSISTANCE FUND OF
PHILADELPHIA COUNTY *v.* POWELL, APPELLANT
256 Pennsylvania 470 (1917)

BROWN, C.J. By the Act of April 29, 1913, P.L. 118, provision was made for monthly payments, after approval by trustees appointed by the governor to "indigent, widowed, or abandoned mothers, for partial support of their children in their own homes."

This was changed by the Act of June 18, 1915, P.L. 1038, which provides that such payments are to be made "to women who have children under sixteen years of age and whose husbands are dead or permanently confined in institutions for the insane, when such women are of good repute, but poor and dependent on their own efforts for support, as aid in supporting their children in their own homes."

The proceeding under review on this appeal was instituted in the court below for the procurement of a writ of mandamus to compel the auditor general of the Commonwealth to draw his warrant upon the state treasurer for the payment of a sum of money to the mother of four children, a resident of the County of Philadelphia. The relators are trustees duly appointed by the governor for that county. The facts involved were agreed upon in a case stated. Benjamin Wilbur, the husband of Edwina Wilbur, the mother of the four children, disappeared in the year 1906, and has never been heard of since. The trustees, in view of his unexplained absence for seven years and upwards, found that he was dead, and approved the application of his wife for the relief provided for by the statute. The learned court below sustained the application for relief on the ground of the presumption of the death of the applicant's husband. The correctness of this is the sole question before us.

The women for whom charitable provision is made by the Act of 1915 are not, as under the Act of 1913, those whose husbands have abandoned them, but those "whose husbands are dead or permanently confined in institutions for the insane," and, before trustees can award relief under the later act, it must appear to them that the husband of the applicant is dead, if her application is based upon his death. While the rule is well settled for most judicial purposes that there is a presumption of the death of a person of whom no account can be given at the expiration of seven years from the time he was last known to be living, this presumption, like all others of fact, may be overcome by legitimate evidence opposed to it. "Any fact which fairly and reasonably tends to rebut the inference assumed to be correct in the presumption of death is admissible. For example, it may be shown by the opponent that the absentee had a motive for his silence, as that he was a fugitive from justice, had absconded from his creditors, or has some other reason for con-

cealing his identity. So one who has run away from an orphan asylum, prison, jail, or other places of involuntary detention will not be inferred or assumed to be dead from the same facts which might fairly ground the inference or assumption in case of one with less inducement to conceal his whereabouts": Chamberlayne on *The Modern Law of Evidence*, Vol. II, Sec. 1117. It is, however, unnecessary to dwell upon the rule as to the presumption of the death of a person after the expiration of seven years from the time he was last known to be living, for that rule is not involved in the case before us. When the legislature made provision for women "whose husbands are dead," it is to be conclusively presumed that husbands actually dead, and not merely presumably so, were in the legislative mind. The whole matter was for legislative consideration, and the legislature might have extended the beneficent provisions of the Act of 1915 to women whose husbands are presumed by the law to be dead; but it did not do so, and, until it does, the act must be construed as it is written, and the word "dead" given its popular, natural and ordinary meaning. . . .

The judgment for the relators on the case stated is reversed, and is here entered for the defendant.

14. Mothers' Aid Not Mandatory

SOPER v. WHEELER ET AL.
239 Massachusetts 327 (1921)

CARROLL, J. This is a petition for mandamus by Teresa C. Soper, a resident of Gloucester with two dependent children under the age of fourteen, who has resided in this Commonwealth more than three years and whose husband has deserted her, against the overseers of the poor of the city of Gloucester, the city of Gloucester and the Attorney General; praying that the overseers of the poor may be directed to grant her such aid under G.L. c. 118, as will enable her to bring up her children properly in her own home. The petition recites that her husband deserted her December 23, 1920; that a warrant has issued for his arrest, but he has not been apprehended and he is not known to be within the jurisdiction of the Commonwealth; that the two children are entirely dependent upon the petitioner for support; that she has applied for relief as provided by

G.L. c. 118, and the overseers have neglected and refused to furnish sufficient aid to enable her to bring up her children properly in her home. The answer of the overseers, so far as material, alleges that neither the petitioner nor her children have a settlement in the Commonwealth; . . . that the attention of the Department of Public Welfare was called to the petitioner's request for assistance and on March 20, 1921, the secretary of the overseers of the poor was authorized to aid the petitioner "to the extent of \$6 per week and rent \$3 per week under *G.L. c. 117*, § 18 and has complied therewith."

It was agreed that the Department of Public Welfare has adopted the policy that a mother shall not receive support under *G.L. c. 118*, in cases of desertion unless it has continued for one year, and this policy has been adopted by overseers of the poor throughout the Commonwealth. It was also agreed that the mother was fit to bring up her children; that the surroundings of the home are such as to make for good character, and that some aid is necessary, but not the particular aid requested; and that she has two brothers "who have assisted her in the past and may assist her in the future." The case is in this court on a reservation by a single justice.

The reservation in this case brings before this court only questions of law. . . . A writ of mandamus will issue to compel the performance of a duty intrusted to the overseers of the poor, and they can be compelled to exercise their judgment and discretion under *G.L. c. 118*; but they will not be compelled to exercise their judgment in a particular way or make a decision favorable to the petitioner. As was said in *Rea v. Aldermen of Everett*, 217 Mass. 427, at page 432: "It is not the function of a writ of mandamus to direct the particular action to be taken, but simply to set the public board in motion to exercise fairly and reasonably the duties imposed by the statute." . . .

The furnishing of aid at the public expense under *G.L. c. 118*, to mothers with dependent children, is not a mandatory duty committed to the overseers of the poor to be exercised in all cases where the mother is fit to bring up her children and the surroundings of the home are such as to make for good character. When assistance can be secured from relatives, organizations or individuals, the over-

seers, in the exercise of a sound discretion and right judgment, properly may refuse to pay for the support of the mother and children from the public treasury.

According to the agreed facts, while Mrs. Soper is in need of some relief, she does not require the particular aid sought for. She has brothers who, it is to be inferred, are able to help her, they have assisted her in the past and may render assistance to her in the future. When a mother with dependent children is aided by others to such an extent that her children are properly cared for in her own home, the overseers cannot be compelled by this statute to supply her with additional aid, and if the mother has relatives and friends who are able and willing to support her and her children in a reasonable degree of comfort, aid is not to be supplied at the public expense. It is apparent that the main purpose of this legislation for the help of mothers with dependent children was to protect the home and save the family by supplying the mother with the means of rearing her children in her own home, and with this end in view, the overseers of the poor were to co-operate by investigation and inquiry, by enforcing their legal rights, by securing employment for the members of the family other than the mother and her dependent children, and by obtaining relief if possible from those who from kinship or for charitable or humanitarian reasons, are willing to assist, and when this failed, to supply her with aid from the public funds. . . .

The work of the overseers under this statute is under the supervision of the Department of Public Welfare, and that department has established the rule that when mothers with dependent children are deserted by their husbands, relief shall not be given under *G.L. c. 118*, unless the desertion is continued for one year. Whatever may have been the reasons for this rule, we are not called upon to decide when aid is essential for the support of a mother with dependent children under the age of fourteen, who is competent to train and rear them, and the surroundings of the home are respectable and of good repute and it is impossible to secure adequate help from relatives, friends or charitably disposed persons, or in any other way, that under this rule the overseers are excused from performing the duty of aiding her at the public expense.

In the case at bar it is agreed that the particular support sought is not necessary; and as her brothers may aid her as they have in the past, in our opinion, the writ should not issue to compel the respondents to furnish the aid asked for, and the petition should be denied, without costs. So ordered.

15. The Question of Procedure in Revoking a Grant

DENSMORE ET AL. v. COUNTY COURT OF MERCER COUNTY
106 West Virginia 317 (1928)

HATCHER, J. The petitioner is the widowed mother of two children under the age of fourteen years. She applied to the county court of Mercer county for a mother's pension under the provision of Chapter 46B, Code, as amended by *Acts 1923*, Chapter 28. A hearing was had on October 10, 1927, and the court found that all the conditions set forth in the statute "exist in this case" and awarded petitioner \$20 a month until the further order of the court. One payment was made; but on November 15, 1927, without any notice to her, the allowance was revoked. On January 10, 1928, petitioner appeared before the county court, moved that the award be reinstated, and upon refusal, asked for a hearing. The court set January 25th for the hearing, but after petitioner had left the courtroom and without notice to her, entered an order overruling her motion. She asks in this proceeding that the court be required to pay her the award of \$20 per month from and including December, 1927.

The respondent answers that because of complaints subsequent to the award, it had the county probation officer investigate and report on the petitioner, and upon that report concluded that the petitioner was not a proper person morally to bring up her children; and accordingly caused the pension to be discontinued. Several affidavits are filed with the answer which charge petitioner with grossly improper conduct, to the consideration of which petitioner objects. The affidavits were taken without notice to petitioner, and without afterwards affording her the opportunity for cross-examination. They cannot, therefore, be accepted as proof of her moral obliquity. . . .

It is the established rule that a pension, such as the one here,

is a mere gratuity in which the pensioner has no vested legal right, and which is terminable without notice, at the will of the state. . . . The right to so terminate a pension, however, rests with the Legislature, and not with an agent, such as the respondent herein, who administers it—notwithstanding inapt expressions in some decisions indicating the contrary. . . .

The procedure in this state for obtaining a mother's pension is definitely prescribed by the statute. Section 3 of Chapter 46B, Code, requires that upon the filing of an application for relief, the home of the mother shall be visited by a member of the court who shall investigate the facts set forth in the application, and shall report to the court thereon together with his approval or disapproval of the application. After such investigation and report, a petition may be filed by the investigator or "any reputable person of the county" setting forth the facts necessary to give the court jurisdiction, etc., and making the mother and the court respondents thereto. Summons shall then be served on the respondents and the court shall hear the cause upon the return day of the summons, etc. See Sections 4-8. Section 9 directs that "upon the hearing in court" if the court finds the facts alleged in the application to be true, it *shall* make an order to pay the mother the amount necessary to care for the children, etc., "until further order of the court." . . .

The hearing contemplated under the statute is obviously a public hearing, where counsel may appear and evidence be introduced. . . . No appeal or review from the finding of the court is provided. The determination in such case is usually final. . . . The respondent contends, however, that the judgment herein is deprived of finality by the statutory condition "until further order of the court." The contention is well taken. However, the statute surely implies a *further hearing* before the entry of that *further order*. Otherwise the hearing so positively required as a prerequisite to the finding becomes of little consequence. Why have a hearing if the case made then can be later nullified by a "whispering campaign?"

The statute does not prescribe the manner in which an award may be terminated. As the interests of the mother are as much at stake in the revocation as in the allowance of the pension, it would seem that the same consideration should be extended her in each

instance. The procedure adopted by the respondent in vacating the allowance is the opposite in every way to that followed in granting it. The award was the result of an open hearing of which the petitioner had notice. The revocation was the result of an *ex parte* investigation of which she had no notice. The award was the result of the judgment of the court. The revocation was the result of the representations of an investigator who is not endowed with any authority under the Act. The only investigation directed thereby is that of a member of the court. Even his recommendation thereon is not conclusive. It will be considered at the hearing, but is merely advisory. . . . The Act imposes on the court the duty to consider all the legitimate evidence before it at the hearing; and to make its finding according to its own judgment and not upon that of another. Here the court admits that in recalling the allowance, it acted, not on its own discretion, but upon the investigation of the probation officer. An anomalous situation indeed when the finding of a regularly authorized tribunal is discarded in favor of the report of one without authority in the premises. We therefore hold that the order of revocation was unwarranted.

In her application for the pension, which was sworn to, the petitioner alleged that she was a fit person morally to bring up her children. She also swore to her moral propriety at the hearing. The court accepted her statement. If she is in fact the character portrayed by the affidavits and reported by the probation officer, she deceived the court and should not be permitted to reap the advantage of her own fraud. . . . And while the affidavits and the report of the probation officer are not evidence against her, they afford sufficient reason to arrest a judgment in her favor until due inquiry may be made. We are therefore of opinion to refuse her prayer for an immediate payment of the accrued allowances. We do direct the court, however, to give her a hearing on the charges of unfitness, and if the charges are not sustained by proper evidence, then to pay her the pension as prayed for. . . .

16. Opinions of an Attorney-General on the Wisconsin Law

WISCONSIN STATE BOARD OF CONTROL: LAW PROVIDING AID TO DEPENDENT CHILDREN (MOTHERS' PENSION LAW) WITH THE OPINIONS OF THE ATTORNEY-GENERAL THEREON AND STATEMENT OF EXPENDITURES (MADISON 1920)

A. MUST THE FAMILY BE DESTITUTE?

LETTER ADDRESSED TO THE ASSISTANT DISTRICT ATTORNEY OF GREEN BAY, WISCONSIN, NOVEMBER 30, 1915

I have your letter of November 18th in which you refer me to ch. 637, laws of 1915, being the so-called Mothers' Pension Act. You inquire whether under said law a judge of a juvenile court or of a county court would be justified in granting aid to a woman under the following statement of facts:

———, widow for more than one year, is the mother of five children under the age of fourteen years, the oldest thirteen and the youngest six. The oldest, however, is at the Home for the Feeble-Minded at Chippewa Falls, leaving four in her custody. Another member of the family is her step-father, aged 82 years, and who has no means of support. The widow owns a homestead valued at about \$1800, on which there is a \$500 mortgage, there being a small house in the rear which rents for \$6 a month. She works regularly at \$1 a day, seven days in the week. She has no one to leave the children with, and although they are doing very well and going to school regularly, yet she feels that there should be some attention given the children in their home.

Ch. 637, laws of 1915, creates sec. 573f, Stats. While it has come to be popularly known as the "Mothers' Pension Law" its purpose rather is to provide for the support, care and maintenance of a certain class of children with reference to whom the public owes either a positive duty of support or with whose condition it is concerned as a pure matter of public policy and welfare. It is, in a sense, supplementary of other statutory provisions providing for the care, protection and maintenance of dependent and abandoned children, and its main purpose seems to be to provide for the maintenance of certain children in their own homes where they may be subject to the beneficent influence of a mother's care and training.

The salient features of the law may be stated as follows: It deals with the following classes of children: (a) Those who are dependent upon the public for support. (b) Those who are neglected. (c) Those whose health is endangered.

Anyone knowing of any such child may report the same to the judge of a juvenile court or to a county judge of the county in which such child resides. It is then made the duty of the county judge to make an investigation of the conditions surrounding the child. As a result of such investigation the judge may, among other things, "grant aid to it or to its parents or to any person having the care and custody of such child." . . .

The aid provided—

Shall not exceed fifteen dollars per month for the first child and ten dollars per month for each additional child and in no case shall any one family receive more than forty dollars per month. Such aid shall be the only form of public assistance granted to the family and no aid shall continue longer than one year without reinvestigation and action as when first granted.

Applying these provisions of the law to the facts submitted by you, we find that the mother of the children is a widow. She has in her custody five children, all under the age of fourteen years, dependent upon her for support. Presumably she is "of good moral character and the proper person to have the custody and care of the dependent children." Without question, therefore, aid may be granted under this law so far as such requirements are concerned.

The question then arises, whether the children fall within one of the classes to which the law is intended to apply. I think it is apparent at once that they are not dependent upon the public for support; neither is their health endangered. At least your statement does not convey any such suggestion. It is my opinion therefore, that if aid may be granted to them under this law it is because they are neglected.

When may a child be said to be neglected? In sec. 573-1, which is in *pari materia* with the law under consideration, it is provided that the term—

"Neglected child" shall mean any child under the age of sixteen years who for any reason is destitute or homeless or abandoned or dependent on the public for support, or has not proper parental care or guardianship.

These children are neither destitute nor homeless nor abandoned nor dependent on the public for support.

Do they have proper parental care within the meaning and contemplation of this law? If this question can be answered in the

negative, I think the law contemplates that aid shall be granted. This law was passed in response to a rapidly crystallizing public sentiment that the state should not only take a human interest in the present welfare of children so situated, but that the interest which the state has in them as future citizens justifies it, as a plain business proposition, in doing whatever may be necessary to promote their development into good and useful men and women, saving them from future delinquency. . . .

It is the purpose of the law to secure to the child the mother's association and influence, which is inconsistent with her absence from home seven days in the week. It is the purpose of the law to assure the presence of the mother in the home where she may be in personal supervision over her children. In my opinion it is exactly such cases as we have here under consideration that the law was intended to relieve. Certainly, where a mother is absent from home earning a living for the family seven days out of the week she cannot exercise over them that parental influence that is so potent in shaping and developing their disposition and character.

It is true that the administration of this law is placed somewhat exclusively with the county judge or the judge of the juvenile court. A large discretion is vested in him. Good judgment should be exercised in each individual case. The time during which the mother may be safely absent from home in quest of the family living may depend somewhat upon the disposition as well as the ages of her children. No hard and fast rule can be laid down for all cases. It does appear very clearly to me, however, that some aid should be given to a mother who has no more resources than the one mentioned in your letter, and that it is the policy of the law to provide such aid to every mother so situated as will enable her to spend some time with her children at home.

I note your reference to the fact that this widow owns a homestead valued at about \$1800 on which there is a \$500 mortgage, there being a small house in the rear which she rents for \$6 a month. This is a condition which may properly be taken into consideration, no doubt, in fixing the amount of aid which should be accorded, but, in my opinion, it does not in the least degree affect her right to aid in some amount [pp. 22-28].

THE CHILD AND THE STATE

B. CHILDREN OF UNMARRIED MOTHER

LETTER ADDRESSED TO DISTRICT ATTORNEY, VIROQUA
WISCONSIN, JANUARY 6, 1916

In your communication of the 5th inst. you submit for my official opinion thereon the following question:

Is a woman who is the mother of two bastard children, of the ages two and four respectively, entitled to aid under subdivision 5 of section 2 of chapter 637, laws of 1915, the same as though she were a widow, all other conditions being the same. In other words, is this section intended as aid to the children, irrespective of whether or not the mother is a widow or an unfortunate female with two children?

The provision to which you refer is as follows:

Aid for dependent children shall only be granted upon the following conditions. There must be one or more children living with or dependent upon the mother or grandparents or person having the care and custody of such children, one or more of whom shall be under the age of fourteen; the mother or grandparent or such other person must have been a legal resident of the county at the time of the notice for such aid; the mother must be a widow or the wife of a husband who is incapacitated for gainful work by permanent mental or physical disability, or of a husband who has been sentenced to a penal institution for one year or more; or of a husband who has continuously deserted her for one year or more during which time all provisions of the law have been used to enforce support and none has been obtained; the mother or grandparents or persons having the care and custody of such children must be of good moral character and the proper person to have the custody and care of the dependent children; the period of aid must be likely to continue longer than one year and aid must be reasonably necessary to save the children from neglect or danger to health.

The provision just quoted is rather imperative and mandatory in its terms and in its tone. "Aid for dependent children shall only be granted upon the following conditions." "There must be one or more children living with or dependent upon the mother," etc. "The mother must be a widow or the wife of a husband," etc. "The mother or grandparents or person having the care and custody of such children must be of good moral character," etc. "The period of aid must be likely to continue," etc.

It plainly appears to have been the intent of the legislature to restrict the aid to that class of children who respond specifically to the requirements of the statute, and the legislature quite indus-

triously defined the conditions under which this aid may be granted. The children mentioned in this letter do not fall within any of the designations, in the provision quoted, to whom aid may be granted. It may seem that this class of children are as much entitled to the beneficence of the state and the public, and that the state and the public has the same interest in the welfare of such children as those specifically designated in the statute, but it is quite clear to me that they are not embraced within its provisions. The statute is not in any sense ambiguous and consequently is not susceptible to construction. The language of the legislature is clear and effect must be given to its express terms.

It is my opinion that the situation referred to by you may not be relieved under the provisions of this law.¹

The foregoing is based on the assumption that the children are living with the mother. If they were living with their grandparents or other person the above conclusion might be different [pp. 36-38].

C. WHAT IS A "PERMANENT" DISABILITY?

LETTER ADDRESSED TO THE DISTRICT ATTORNEY OF PORTAGE, WISCONSIN
AUGUST 14, 1916

In your communication of August 8th you submit the following statement:

A woman living in this county, whose husband is also living, has several children under the age of fourteen living with her; neither the woman or the husband have any property, and for more than a year the husband has been physically incapacitated for work of any kind, but the doctors will not certify to the fact that he is permanently incapacitated.

You inquire whether the word "permanent" in subsec. 5, sec. 573f, Stats., is to be construed to mean for life or merely for a year, as the context would seem to indicate. . . .

Subsec. 6 contains the following: "No aid shall continue longer than one year without reinvestigation and action as when first granted." The immediate question before us is whether the husband under the facts stated by you, "is incapacitated for gainful

¹ [The Wisconsin law was amended in 1919 to include the children of unmarried mothers. *Laws of Wisconsin, 1919*, chap. 251.—EDITOR.]

work by permanent mental or physical disability," in contemplation of sec. 573f.

The word "permanent" has been often before the courts.

"Permanent employment" means employment for an indefinite time, which may be severed by either party. (*Words and Phrases*, 2nd Series, Vol. 3, 970.)

The word "permanent" is not equivalent to "perpetual" or "unending" "lifelong" or "unchangeable"; and the term "permanent alimony" as used in the decree of the court, merely designates the character of the alimony which is awarded, rather than the amount to be paid, or the time during which the payment should continue. A "permanent abode" is a home which a party may leave as interest or whim may dictate, but which he has no present intent to abandon. (*Words and Phrases*, 2nd Series, Vol. 3, 969.)

Webster defines "permanent" as the following:

Continuing in the same state, without any change that destroys form or character; remaining unaltered or unremoved; abiding; durable; lasting; continuing, and gives as synonymous lasting; durable.

You will note that the widow will be entitled to aid in cases where the husband has been sentenced to imprisonment for one year or when a husband has continuously deserted her for one year or more. And it is expressly provided that the period of aid must be likely to continue longer than one year, and that no aid shall continue longer than one year without reinvestigation. All this would indicate that if the injury is such that it is lasting until another examination can be made, it is a permanent disability, and that when a physician, as in the present case, finds the party in question is incapacitated for an indefinite period of time which is certain to last over a year, he is justified to certify that the party is incapacitated for gainful work by permanent disability. I can see that this question is not free from doubt and that the court may place a less liberal construction upon the word "permanent." But I believe the statute should receive a liberal construction, so as to accomplish the purpose for which it was enacted; and taking the context of this statute into consideration, and the whole scheme as disclosed therein, I believe the word "permanent" should receive the construction given to it, as herein indicated [pp. 50-52].

17. The Federal Government Provides Grants-in-Aid

SOCIAL SECURITY ACT, 49 UNITED STATES STATUTES AT LARGE, 74TH
CONG., 1ST SESS., CHAP. 531 (AUGUST 14, 1935)

TITLE IV—GRANTS TO STATES FOR AID
TO DEPENDENT CHILDREN

APPROPRIATION

SECTION 401. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy dependent children, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of \$24,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Board, State plans for aid to dependent children.

STATE PLANS FOR AID TO DEPENDENT CHILDREN

SEC. 402. (a) A State plan for aid to dependent children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim with respect to aid to a dependent child is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; and (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve

any plan which imposes as a condition of eligibility for aid to dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within the State within one year immediately preceding the application, if its mother has resided in the State for one year immediately preceding the birth.

PAYMENT TO STATES

SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to dependent children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-third of the total of the sums expended during such quarter under such plan, not counting so much of such expenditure with respect to any dependent child for any month as exceeds \$18, or if there is more than one dependent child in the same home, as exceeds \$18 for any month with respect to one such dependent child and \$12 for such month with respect to each of the other dependent children.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than two-thirds of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should

have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified.

OPERATION OF STATE PLANS

SEC. 404. In the case of any State plan for aid to dependent children which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 402 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402 (a) to be included in the plan;

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

ADMINISTRATION

SEC. 405. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of \$250,000 for all necessary expenses of the Board in administering the provisions of this title.

DEFINITIONS

SEC. 406. When used in this title—

(a) The term "dependent child" means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental

incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, in a place of residence maintained by one or more of such relatives as his or their own home;

(b) The term "aid to dependent children" means money payments with respect to a dependent child or dependent children.

18. A State Law Amended To Conform with the Federal Requirements

"AN ACT EXTENDING THE PROVISIONS OF LAW PROVIDING FOR AID TO MOTHERS WITH DEPENDENT CHILDREN," MASSACHUSETTS ACTS AND RESOLVES, 1936, CHAP. 413

WHEREAS, The deferred operation of this act would tend to defeat its purpose, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.
Be it enacted, etc., as follows:

SECTION 1. The General Laws are hereby amended by striking out chapter one hundred and eighteen, as amended, and inserting in place thereof the following:—

CHAPTER 118 AID TO DEPENDENT CHILDREN

SECTION 1. The following words and phrases as used in this chapter, unless the context otherwise requires, shall have the following meanings:—

"Dependent child," a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from home or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt in a place of residence maintained by one or more of such relatives as his or their own home, whether or not they or any of them have a settlement within the commonwealth.

"Aid to dependent children," money payments with respect to a dependent child or dependent children.

"Department," the department of public welfare.

"Parent" shall include any relative described in the paragraph of this section defining "Dependent child," in respect to dependent children in his or her care or custody.

SEC. 2. In every town the board of public welfare shall aid every parent in properly bringing up, in his or her own home, each dependent child, if such parent is fit to bring up such child, but no aid shall be granted under this chapter for or on account of any child unless (1) such child has resided in the commonwealth one year immediately preceding the application for such aid, or (2) such child was born within the commonwealth within one year immediately preceding such application, if its mother has resided in the commonwealth for one year immediately preceding the birth. The aid furnished shall be sufficient to enable such parent to bring up such child or children properly in his or her own home. Nothing in this chapter shall be construed as authorizing any public official, agent or representative, in carrying out any provision of this chapter, to take charge of any child over the objection of either the father or the mother of such child, or of the person standing in loco parentis to such child, except pursuant to a proper court order.

SEC. 3. Except as hereinafter provided, before so aiding any parent the board of public welfare shall have determined that the parent is fit to bring up such child or children and that the other members of the household and the surroundings of the home are such as to make for good character, and that aid from the board is necessary to enable such parent to bring up such child or children properly. For this purpose the board shall make an immediate and careful inquiry, including the resources of the family and the ability of its other members, if any, to work or otherwise contribute to its support, the existence of relatives able to assist the family, and individuals, societies or agencies who may be interested therein; shall take all lawful means to compel all persons bound to support such parent and such child or children to support them, and to enforce any other legal rights for their benefit; shall press all members of the family who are able to work, other than such parent and such child or dependent children, to secure work; shall try to secure work for them; and shall secure all necessary aid for such parent and such child or children which can be secured from relatives, organizations or individuals. This section shall not prevent such board of public welfare from giving prompt and suitable temporary aid, pending compliance with the requirements of this section, when in its opinion such aid is necessary and cannot be obtained from other sources. A de-

tailed statement of expenses incurred under this section shall be rendered to the department, together with such certificates or other guarantees as it may require.

SEC. 4. The board of public welfare, either by one of its own number or by its duly appointed agent, shall visit at least once in every three months, at their homes or other places where they may be living, every such parent and dependent child or children who are being aided financially or otherwise by said board, and after each visit shall make and keep on file as a part of its official records a detailed statement of the condition of the home and family and all other data which may assist in determining the wisdom of the measures taken and the advisability of their continuance; and such board shall at least once in every year reconsider the case of each such parent with whom it is dealing, and enter its determination with the reason therefor on its official records.

SEC. 5. The department shall supervise the work done and measures taken by the boards of public welfare of the several towns in respect to families aided and service given under this chapter; and for this purpose may make such rules relative to notice and reimbursement and such other rules relating to the administration of this chapter as it deems necessary, and may visit and inspect any or all families so aided, and shall have access to any records and other data kept by such boards or their representatives relating to such aid, and may require the production of books and papers and the testimony of witnesses under oath. The department shall make an annual report to the general court, and shall make such reports to the social security board established under the federal social security act, approved August fourteenth, nineteen hundred and thirty-five, as may be necessary to secure to the commonwealth the benefits of said act.

SEC. 6. In respect to all sums disbursed for aid under this chapter, the town disbursing the same shall, after approval of the bills by the department, and subject otherwise to section forty-two of chapter one hundred and twenty-one, be reimbursed to the extent of moneys received by the commonwealth from the federal government on account of such disbursement, under the provisions of the federal social security act, approved August fourteenth, nineteen

hundred and thirty-five, and also by the commonwealth for one third of the total amount disbursed.

SEC. 7. Money received by the commonwealth from the federal government as a grant for aid to dependent children shall be paid to the several cities and towns as allotted by the department, and shall be kept as a separate account by every such city and town and used only for purposes specified by the department, notwithstanding the provisions of section fifty-three of chapter forty-four.

SEC. 8. Any person aggrieved by the failure of any town to render adequate aid under this chapter, or by the failure of the board of public welfare of a town to approve or reject an application for aid hereunder within thirty days after receiving such application, shall have a right of appeal to a board composed of the supervisor of mothers' aid in the department, the director of the division of aid and relief, a member of the advisory board of the department designated by the commissioner of public welfare, and the commissioner of public welfare, ex officio, which board, hereinafter called the appeal board, shall forthwith make a thorough investigation and shall have authority to act upon any appeal in relation to the following matters:

1. The matter of denial of aid by the local board of public welfare;
2. The matter of a change in the amount of aid given;
3. The matter of withdrawal of aid.

In all cases of appeal an opportunity for a fair hearing shall be provided by the appeal board. All decisions of the appeal board shall be binding upon the local board of public welfare involved and shall be complied with by such local board.

SEC. 9. If an application for aid under this chapter is affected by the eligibility of the applicant to receive aid under chapter one hundred and fifteen, the applicant shall be entitled to exercise such options and execute such waivers as may be necessary to receive the aid which he seeks.

SEC. 10. Aid hereunder shall not be subject to trustee process and no assignment thereof shall be valid. No applicant for aid hereunder who knowingly makes any false statement, or seeks to perpetrate any fraud or deception, in or relative to his application for such aid, shall be granted any aid hereunder upon such application,

nor shall he be eligible for one year thereafter to make further application for such aid or to receive the same.

SEC. 2. Subsection seven of section one of this act and this section shall take effect in conformity with the constitution, and the balance of this act shall take effect on January first, nineteen hundred and thirty-seven; but if so much of the provisions of the federal social security act therein referred to as provide for grants for aid to dependent children shall be repealed, or shall become inoperative because of unconstitutionality or otherwise, this act shall, sixty days thereafter, become null and void, and said chapter one hundred and eighteen, as in effect immediately prior to the effective date of this act, shall thereupon again be in full force and effect.

19. An Example of State Administrative Regulations

MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE: RULES RELATING TO THE ADMINISTRATION OF THE AID TO DEPENDENT CHILDREN LAW AND RULES RELATIVE TO NOTICE AND REIMBURSEMENT, REVISED JANUARY 1, 1937

In general, the same principles which have been applied to the administration of the Mothers' Aid Law should continue to apply to the Aid to Dependent Children Law, except when they must be modified to meet changed circumstances in the case of dependent children living in the homes of relatives other than their own mothers.

RULES RELATING TO THE ADMINISTRATION OF THE AID TO DEPENDENT CHILDREN LAW

1. *Applications.*—Application should be made by the parent on form A.D.C. # 1, and the local board of public welfare should assist the applicant in the recording of the proper information on such form.

2. *Rejections.*—Each board of public welfare shall render to the department on the form prescribed by the department a monthly list of the names and addresses of all individuals whose applications have been refused or denied, including the reasons for the action taken.

3. *Investigation.*—A detailed separate case history with correspondence and other data relating thereto should be kept on file in

the office of the board of public welfare as a part of its official files. Documentary proofs, affidavits, and verifications must be on file in case folders.

4. *Monthly reports.*—Monthly statistical reports entitled Aid to Dependent Children, pursuant to Title IV of the Social Security Act as required by the Social Security Board, should be filled out in duplicate, one copy of which should be sent to the department for each calendar month on or before the tenth of the following month.

5. *Quarterly reports.*—Quarterly reports on each case should be sent to the department on form A.D.C. # 4.

6. *Amount of aid.*—The amount of aid which should be granted should be determined by the local board of public welfare with due regard to the resources and necessary expenditures of the family and the conditions existing in each case, and in accordance with the rules established by the department, and should be sufficient, when added to all other income and support available, to provide reasonable subsistence compatible with decency and health.

The amount of aid should be changed according to the needs of the family, increased in case of acute illness entailing extraordinary expense, and reduced as the need for aid lessens.

Changes in the amount of aid should be recorded in the case history and noted on the quarterly reports.

Cash or checks should be paid twice a month, preferably on the first and fifteenth of each month.

7. *Money on hand.*—A dependent child and his father and mother may have funds in the form of cash, securities, or other property readily liquidated, amounting in the aggregate to not more than \$300 in current value. They should be required to show any bank-book or other evidence of such property to the board of public welfare upon request of such board.

8. *Title to or equity in real estate.*—A dependent child or his father or mother may retain title to or equity in real estate upon which the family actually resides, provided that the carrying charges (interest, taxes, water rates, fire insurance, and necessary upkeep), do not exceed the equivalent of a reasonable monthly rent; and further provided that the equity does not exceed \$2500 in present value.

In cases of joint ownership of the father, mother, and children, the total amount of equity must not exceed \$2500 in present value.

In cases where there is title to or equity in real estate upon which the family does not reside, the ownership of which can be proven to be of benefit to the family (such as pasture land or woodlots) the case should be referred to the department for special consideration as an exception to the general rule, provided the total equity of such holdings does not exceed \$2500 in present value.

9. *Insurance*.—No parent who is otherwise eligible for aid, under the law shall be disqualified because of the ownership of insurance. In giving consideration to the question of insurance the board of public welfare should assist the applicant to make adjustments reducing the cost of carrying such insurance to a reasonable minimum amount, in keeping with the given resources or income of the family.

10. *Medical aid*.—Medical aid required by the parent or dependent child either in the home or in the hospital, nursing care in the home, dental aid, medicines, and medical supplies, should be granted under the provisions of this chapter.

Every dependent child should receive a medical examination as soon as practicable after aid has been granted and as often thereafter as the board of public welfare deems necessary.

Claims for services as described herein for aid granted to members of families other than the parent or dependent children must be made under the regular relief laws.

11. *Desertion*.—In the case of dependent children whose father or mother has deserted them, application must be made for the issuance of a warrant for the father for non-support under chapter 273 of the *General Laws*, and one year must have elapsed since the desertion of the father occurred. Every reasonable effort should be made by the board of public welfare to secure the apprehension of the deserting father or mother.

12. *Children born out of wedlock*.—Children born out of wedlock are not debarred from consideration under this law. If there are applications regarding which the board of public welfare is in doubt, the State Department of Public Welfare would be glad to assist the local board in determining the eligibility of the mother to receive favorable action.

13. *Temporary need.*—Aid under this law should not be granted to a "parent" unless there is a reasonable probability that need of such aid will exist for more than one year.

AID TO DEPENDENT CHILDREN; RULES RELATIVE
TO NOTICE AND REIMBURSEMENT

1. *Original notice.*—Local boards of public welfare should notify the department on form A.D.C. # 2 when they begin to aid, and this notice shall remain in force until the case is closed. Reimbursement by the commonwealth will be allowed for payments made within ten days next before notice has been mailed.

2. *Notice of reopened cases.*—Whenever a case is reopened a new notice is required stating the reason for such action.

3. *Itemized bills.*—Itemized bills on form A.D.C. # 6 should be rendered to the department on or before the first day of October annually for the twelve months ending on the thirtieth day of June preceding. (*General Laws*, chap. 121, sec. 42.)

Whenever a case is closed a final bill should be submitted to the department within thirty days after the date of closing.

4. *Report of closed cases for Social Security Board.*—Whenever a case is closed, an immediate report should be sent to the department on Form A.D.C. # 5, as required by the Social Security Board.

It is important that this report be mailed on the date when the last aid is granted.

5. *Federal grants.*—Boards of public welfare will receive their proportionate share of the Federal Grants for Aid to Dependent Children as allotted by the department as provided in section 7 of chapter 118 of the *General Laws* as amended by chapter 413 of the *Acts of 1936*, and in conformity with the Social Security Act (Title IV, sec. 403(a)). Money received by the commonwealth from the Federal Government as a grant for Aid to Dependent Children will be allotted by the department, and should be kept as a separate account and used only for the granting of aid to dependent children. The funds received may be immediately used by the board of public welfare as they do not have to be appropriated.

6. *Reimbursement by the commonwealth.*—After approval of the bills by the department and subject to compliance with section 42,

chapter 121 of the *General Laws*, Tercentenary Edition, cities and towns will be reimbursed by the commonwealth for one-third of the total amount expended, as provided by section 6, chapter 118 of the *General Laws*.

7. *Notice of temporary suspension of payments*.—Notice of temporary suspension of payments with the reason therefor and notice of the resumption of such payments should be sent to the department by letter or on form A.D.C. # 4.

8. *Notice of change of address*.—Notice of change of address within the city or town should be sent to the department immediately. When a recipient of Aid to Dependent Children moves out of a city or town, the case should be closed. A new application for aid must be made to the board of public welfare of the city or town to which the family has removed.

9. *Notification of hospitalization*.—Hospitalization of a dependent child or the "parent" should be reported by letter to the department within five days of the date the local board assumed liability.

Reimbursement by the commonwealth for hospitalization is limited to its legal proportion of a rate not exceeding twenty-one dollars a week, provided that expenses incurred by a town for tonsil and adenoid operations shall be reimbursed by the commonwealth for its legal proportion of a rate not exceeding fifteen dollars in the case of any one such operation.

Checks to cover hospital and other medical expenses must be made payable to the "parent" who should endorse the check so as to insure the payment to the hospital or doctor.

10. *Allowance for burial*.—The department will reimburse the board of public welfare for its legal share of the reasonable expenses incurred for the funeral and burial of a "parent" or dependent child who received aid under this law, provided there is not sufficient insurance or other resources available.

Claims for the funeral and burial expenses of other members of the family must be made in the regular way under the provisions of chapter 117 of the *General Laws*.

PART II
THE STATE AND THE CHILD OFFENDER

INTRODUCTION

Under the common law in both England and the United States the child was assumed not to have acquired discretion or the capacity to distinguish between right and wrong before he was seven years of age, and he could not therefore under that age be held guilty of felony. While children between seven and fourteen were assumed to be responsible for their acts, courts could find that a child between these years was, in fact, not capable of discerning between good and evil and not subject him to the criminal law. But, as the extract from Blackstone shows (p. 341), young children were hanged in England, and it was believed that this severity would deter other children from committing offenses and, vice versa, that if they were not so punished crime among children would increase.

In her testimony before the British Select Committee on Criminal and Destitute Juveniles¹ in 1852, Mary Carpenter described the inconsistency of the common law in treating juvenile offenders as adults:

In the English law, as far as I understand it, children are considered incapable of guiding themselves, they are therefore entirely submitted to the guidance of their parents; they are not permitted to perform so good an act as apprenticing themselves to a trade; that cannot be done without the permission of their parents. . . . A child, likewise, has not the power of disposing of his own earnings. The parent has a right to demand from him his earnings, if he is not apprenticed, till 21. He has also not the power of willing his property; he is very properly considered as incapable of guiding himself. The father is therefore considered as responsible for his maintenance; if he neglects to provide him with proper food, the child can appeal to the parish, who will punish the father for so neglecting him. But the moment the child shows he is really incapable of guiding himself by committing a crime, from that moment he is treated as a man. . . . He is tried in public, and all the pomp and circumstance of law is exercised towards him as to a man, while his father is from that moment, according to the present law of the land, released from obligation to maintain him.

¹ *Report from the Select Committee on Criminal and Destitute Juveniles; Together with the Proceedings of the Committee, Minutes of Evidence, Appendix and Index* (ordered by the House Commons to be printed, June 24, 1852), par. 935, p. 118.

The English criminal law to which children were subjected was in the seventeenth century severe, not to say barbarous. Confinement in prison as a method of punishment had not been developed; and felonies were usually punished by death or transportation and misdemeanors by whipping, branding, mutilating, and exposure in the stocks. The laws of the colonies were, in general, no less brutal in the punishments they provided. Pennsylvania was the only exception. Here under William Penn's leadership the death sentence was abolished for more than a hundred offenses, and capital punishment was inflicted only for wilful murder.¹ In contrast, the *General Laws* adopted by New Plymouth Colony in 1671, in a chapter devoted to the "Capital Laws," provided death for sixteen offenses, including in addition to wilful murder, slaying in anger, treason, and kidnapping, such offenses as worshiping any god but the Lord God, blasphemy, rape, homosexuality, being a witch, or consulting with a Familiar Spirit. Of special interest in this discussion is the following provision for the punishment of children who were rebellious or committed offenses against their parents:

If any Childe or Children above sixteen years old, and of competent Understanding, shall Curse or Smite their Natural Father or Mother; he or they shall be put to Death, unless it can be sufficiently testified that the Parents have been very Unchristianly negligent in the Education of such Children, or so provoked them by extreme and cruel Correction, that they have been forced thereunto, to preserve themselves from Death or Maiming.

If a Man have a Stubborn or Rebellious Son, of sufficient years and understanding (viz.) sixteen years of age, which shall not obey the voice of his Father, or the voice of his Mother, and that when they have chastened him, will not harken unto them; then shall his Father and Mother, being his natural parents, lay hold on him, and bring him before the Magistrates assembled in Court, and testifie unto them, that their Son is Stubborn and Rebellious, and will not obey their voice and chastisement, but lives in sundry notorious crimes; such a Son shall be put to Death, or otherwise severely punished.²

In New Plymouth fines were imposed for playing cards or forgery, or for the first conviction of the "great and raging sin of drunken-

¹ Blake McKelvey, *American Prisons: A Study in American Social History Prior to 1915* (University of Chicago Press, 1936), p. 2.

² New Plymouth, *General Laws*, chap. ii, "Capital Laws," secs. 13 and 14. See William Brigham, *The Compact with the Charter and Laws of the Colony of New Plymouth* (Boston, 1836), pp. 244-45.

ness," but whipping was a more common punishment for misdemeanants. Adulterers were whipped and required to wear the letters *AD* on the arm or back; burglars were branded with the letter *B* for the first and second offense and were punished with death for the third.

Jails existed from the earliest period as places for local detention, and gradually offenders were committed to them. But the difficulty of making these self-supporting led the authorities to return to the cheaper method of corporal punishment—branding, whipping, gagging, exposure, the pillory, or the stocks—rather than punishment by imprisonment. The philosophical discussions of punishment in the eighteenth century modified these practices, and by the nineteenth confinement was made the general method of punishment—first for the minor offender and later as a substitute for capital punishment for most felonies. By the end of the eighteenth century, the jails, houses of correction, bridewells, and workhouses originally intended for vagabonds and the able-bodied on relief housed a mixed population of men, women, and children. While some of them were guilty of poverty only, others were, as the report of the Society for the Prevention of Pauperism (p. 345) revealed, thieves, prostitutes, and degenerates.

The movement to provide special treatment in separate institutions for child offenders began with the publication of the report of the Society for the Prevention of Pauperism in 1819; the Society for the Reformation of Juvenile Delinquents was promptly organized, incorporated, and with the assistance of public funds opened the New York City House of Refuge (p. 347). Many of the children it received were city waifs, without parents or with worse than no parents, who would be classified today as neglected or dependent children.

While both boys and girls were admitted to all the first experimental institutions for delinquent children, they were kept in separate buildings separated by high stone walls. The program of the New York House of Refuge was, as the extracts from the early reports of the institution show (p. 351), one of much work and some formal education, and boys and girls were apprenticed when they were considered ready to be released. The children in the Refuge

were for more than fifty years employed under the contract system. The contractors paid a fixed price for their labor, furnished the material, and supervised the work, while officers of the institution maintained discipline. This accounts for the number of brushes¹ which the annual reports show the boys made in the House of Refuge. The contract system was finally found unsatisfactory—the earnings for the institution were not high, the mercenary motive of the contractors had an undesirable influence on the boys, they were generally overworked, and they had little time or were unfitted by fatigue for school work or recreation. However, although this institution was established with high hopes and good intentions and, although largely supported by public funds was under private management, the contract system was not abandoned until 1884 and then by an act of the legislature.² This did not mean that the children were no longer required to devote a large part of their waking hours to work. The training value of hard work was still believed in and employment of the children provided some revenue but after 1884 the work was directly controlled by the institution. Brush-making was no longer the principal occupation—the manufacture of hosiery took its place for the boys, while the girls continued to be employed in sewing and laundry work.

Other separate institutions for juveniles were established during the period from 1825 to 1865, with programs of training and education similar to the New York House of Refuge. The Philadelphia House of Refuge, supported by both public and private funds, opened its doors in 1828. It was not until 1892 that the boys' department of this institution was moved to Glen Mills and the girls' to a separate institution in Philadelphia.

The Boston House of Reformation, a wholly municipal institution, was opened in 1826. Located at first in a portion of the House of Correction, it was moved to a separate building near the House of

¹ Brush-making became the institutional contract industry in many states during this period.

² William Pryor Letchworth, "History of Child-saving Work in the State of New York," *History of Child Saving in the United States at the Twentieth National Conference of Charities and Correction in Chicago, June, 1893. Report of the Committee on the History of Child-saving Work* (Boston, 1893), pp. 187-88.

Correction in 1837, and in 1841 was placed under the control of the directors of the House of Industry.

In 1848 the first state reform school in the United States was opened in Massachusetts. Theodore Lyman, for whom the school was later named, donated the land for the school and was largely instrumental in inducing the state to establish it. He wanted it to be a school for the training of younger boys who showed delinquent tendencies but, to his disappointment, the upper-age limit was fixed at sixteen. It was, in fact, a prison, for although "a few boys were lodged in the three cottages . . . the greater number lived in the congregate departments, slept in cells, and took their recreation in high-walled yards."¹

The city of New Orleans opened a municipal institution in 1847, and in 1849 New York established the Western House of Refuge in Rochester—this one a purely state institution. Baltimore organized for the establishment of a House of Refuge in 1849, but this institution, which like those of New York and Philadelphia was partly state, city, and private in its support, was not opened until 1855. Maine and Connecticut followed with houses of refuge in 1853 and 1854. Cincinnati provided a municipal reformatory in 1850, while Ohio in 1856 and New Jersey in 1864 established state reform schools.

From this time on state institutions for delinquent boys and girls multiplied rapidly, most of them being established before 1875. Called first "houses of refuge," then "reform schools," and later "training and industrial schools," they all emphasized work and rigid discipline as the method of salvation, and the contract system was until recent years almost universally used in providing the work program.²

While farm schools for neglected and delinquent children were being developed on the continent of Europe during the period when our earliest houses of refuge and state institutions were being es-

¹ Mrs. Glendower Evans, "Statement from the Trustees of the State Primary and Reform Schools of Massachusetts," *History of Child Saving in the United States*, p. 235.

² Homer Folks, *The Care of Destitute, Neglected, and Delinquent Children* (New York: Macmillan Co., 1902), pp. 198-227.

established,¹ England was singularly slow in providing public institutions for delinquent children. A Prison for Juvenile Offenders to whom conditional pardons had been given was established at Parkhurst in 1838, which offered some training in farm work, in carpentry, and in brick-laying,² but this could not be described as a reform school.

In her testimony before the Select Committee on Criminal and Destitute Juveniles in 1852, Mary Carpenter reported on the number of schools for delinquents in the United States³ and commended the combination of private initiative and management with public support as especially useful because much experimenting was needed to determine the best methods of training.

While under the English law of that time children under seven could not be punished for a felony, they were imprisoned and fined for minor offenses. Miss Carpenter in her testimony called attention to the fact that it had been reported during the year (1852) in the *Edinburgh News*

that two children, of the respective ages of two and six years old, were brought before the magistrates; the youngest child attended the learned justice, carried in his mother's arms. The charge brought against them was, that they had been found in the act of laying snares, for the purpose of catching game, in an adjoining field. The crime was proved, at least to the satisfaction of the magistrate, for the evil-doers, aged six and two, were fined each 1£ 6s. 10 d., including expenses, or failing payment, 30 days' imprisonment.⁴

In reply to a suggestion of Miss Carpenter's that the length of sentence to an institution should not be specified in the law but should be dependent upon the progress made, by the individual child, one of the members of the committee raised the question

¹ Appendix I to the *Report from the Select Committee on Criminal and Destitute Children; Together with the Proceedings of the Committee, Minutes of Evidence, and Appendix* (ordered by the House of Commons to be printed, June 28, 1853) gives at some length the history and programs of these European institutions as of that date.

² Testimony of the superintendent of industrial training before the Select Committee on Criminal and Destitute Children (*ibid.*, 1853, par. 617, p. 58).

³ *Report from the Select Committee on Criminal and Destitute Juveniles*, 1852, par. 822, pp. 98-99.

⁴ *Ibid.*, par. 986, pp. 127-28.

whether this would not mean equal treatment for very serious and minor offenses. To which Miss Carpenter replied:

I would ask whether a little child who was sentenced to 15 months' imprisonment for housebreaking, having been convicted before of similar offences, which said little child was only stealing a little oatmeal from absolute destitution, and who died in prison at the age of 11 from positive destitution, is to be considered guilty of a *criminal offence*, the child never having had any home, or anybody to teach him? Can we apply such distinctions to the faults of children?¹

Mary Carpenter was more than a half-century in advance of her time in the theory she thus laid down of treatment on the basis of the need of the individual delinquent rather than punishment for the offense committed. While she devoted her life to work with these neglected children, Charles Dickens is usually given credit for the first English reformatory school, as his story of *Oliver Twist* brought the public to understand the cruelty and futility of the existing system. But in the Act of 1854² establishing the first British reformatory, a concession was made to the doctrine of deterrence by punishment in the requirement of a short period in jail before transfer to the school, which was not abolished until 1899. Institutions for these young delinquents was not the only need at that time. In both the United States and England provision of free schools was entirely inadequate, and care, except under the harshly administered poor laws, was not available for neglected children.

It is to be regretted that when Mary Carpenter visited the United States some twenty-five years after she had praised our system of caring for juvenile delinquents before the Committee on Criminal and Destitute Juveniles, she found the existing institutions a great disappointment (p. 371). The ideal of experiment in treatment had gone and the dreary, prison-like reformatories were certainly not institutions in which progress was being made toward the scientific treatment of delinquent children.

Although inadequate and unscientific, the state institutions for delinquents were better than jails and prisons. But their establishment did not mean that large numbers of children were not still detained in police stations or jails while awaiting trial, or committed

¹ *Ibid.*, par. 920, p. 116.

² 17 & 18 Victoria, c. 86.

to jails for short and sometimes long sentences. It was not until the twentieth century when the juvenile-court movement got under way that real progress was made in preventing this association with the adult offender.²

Of perhaps even greater significance than the establishment of institutions for juvenile offenders was the statute passed by Massachusetts in 1869 which enabled the Massachusetts Board of State Charities to begin what would now be called a system of probation for juveniles with placement in foster-homes as a method of care (p. 366). In 1878³ a law was passed authorizing the mayor of Boston and two years later the aldermen or selectmen of every city or town³ to appoint a probation officer. As little progress was made under this permissive legislation, the state legislature in 1891 passed a law requiring the criminal courts to appoint probation officers and defined their duties.⁴ Massachusetts' example in providing for probation was not followed by the other states until the juvenile-court laws revolutionized the treatment of juvenile offenders.

The first juvenile-court law was passed in Illinois in 1899. Mrs. Lucy L. Flower, Julia C. Lathrop, and Jane Addams were the moving spirits in formulating the new and basically different conception of the treatment of juvenile delinquents which it represented. They first became interested in the more than five hundred children in the Chicago House of Correction, and under their leadership the Chicago Woman's Club induced the Board of Education to establish a

² The census of prisoners made in 1923 by the United States Bureau of the Census in prisons, reformatories, jails, workhouses, etc., in which adults were confined, showed 3,390 were under eighteen years of age. In every state except New Hampshire, some juveniles were reported in these institutions, the largest number in Georgia (U.S. Bureau of the Census, *Prisoners, 1923* [Washington, D.C., 1926], Tables 131, p. 208, and 132, p. 210). The census of 1935 of prisoners in state and federal prisons and reformatories showed 26 "prisoners" under fifteen and 2,541 under eighteen years of age. Those under fifteen were sentenced by courts in Indiana, Illinois, Michigan, Maryland, Virginia, North Carolina, South Carolina, Florida, Arkansas, and Louisiana, while all states except North Dakota had one or more under eighteen years sentenced to confinement with adults (U.S. Bureau of the Census, *Prisoners in State and Federal Prisons and Reformatories, 1935* [Washington, D.C., 1937], Tables 31, and 32, pp. 37 and 38).

³ *Acts and Resolves of Massachusetts, 1878*, chap. 198.

⁴ *Ibid.*, 1880, chap. 129.

⁵ *Ibid.*, 1891, chap. 356.

"school" for the boys in this institution. But this obviously did not meet the need, and they began a more fundamental attack on the problem. After the usual preliminary discussion a committee was appointed by the Illinois State Conference of Charities at its meeting in 1898. In addition to Miss Lathrop and Mrs. Flower, Miss Mary M. Bartelme, later a judge of the Cook County Juvenile Court, and Dr. F. H. Wines, secretary of the Illinois State Board of Charities, and Hastings H. Hart, director of the Illinois Children's Home and Aid Society, urged that the Conference undertake to get a law drafted. The problem was to find how to make a fundamental change in criminal law and criminal procedure which would be upheld by the courts as constitutional.¹ In co-operation with a committee of the Chicago Bar Association, a bill was finally worked out and agreed upon by the interested groups.

Our equity courts are the American substitute for the English High Court of Chancery, which was the keeper of the king's conscience in applying the principles of equity to cases in which the rigid rules of law alone would not result in justice. They exercised the prerogative of the Crown or of the state as *parens patriae* in behalf of children whose welfare was in jeopardy. With the help of leading Chicago lawyers a plan was developed for giving the Illinois courts of equity jurisdiction over child offenders. The first juvenile-court law passed in 1899 was called "An Act To Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children" (p. 392). At that time little was known about the causes of delinquency and, in consequence, little about treatment or prevention. It was believed that if children were separated from adult offenders and the judge dealt with the problems of "erring children" as a "wise and kind father"—as the statute creating the juvenile courts sometimes directed—wayward tendencies would be checked and delinquency and crime prevented or reduced. Under these laws the child offender was regarded not as a criminal but as a delinquent, "as misdirected and misguided and needing aid, en-

¹ See Julia C. Lathrop, "The Background of the Juvenile Court in Illinois," *The Child, the Clinic and the Court* (New York: New Republic, Inc., 1925), p. 290; Timothy D. Hurley, "Origin of the Illinois Juvenile Court Law," *The Child, the Clinic and the Court*, p. 320.

couragement, help, and assistance."¹ The challenging and seminal idea which was back of the juvenile court was that its function was to cure, rather than to punish, delinquency—a very much more difficult task.

The old conception of evenhanded justice was that each offender should receive exactly the same treatment for an offense committed with the same intent. But equality of treatment is not the test of justice in the juvenile court. A new conception of what constitutes justice for children was adopted by the state in the juvenile-court legislation. In the juvenile courts children are all treated alike only when each is treated in accordance with his needs. Thus, whether Negro children, for example, are receiving equal treatment in our juvenile courts depends upon whether the resources available for the treatment of delinquent Negro children are as adequate and scientific as for white children.

The juvenile-court idea spread rapidly. In the ten-year period from 1899 to 1909 the Illinois law, modified and improved, became the model for similar laws in twenty-two states. A number of other states, of which New York, Maryland, and New Jersey were the most conspicuous examples, engrafted on the old criminal law some of the characteristics of the juvenile-court system, such as separation from adults during detention and trial and the use of probation; but children could still be fined, and other characteristic features of the criminal law were retained.

The principle of separate treatment of juvenile delinquents and emphasis on cure rather than punishment spread rapidly not only in the United States but throughout the world.² Great Britain and Canada both adopted juvenile-court laws in 1908, France and Belgium in 1912, Hungary in 1913, Austria and Argentina in 1919, Germany and Brazil in 1923.³ Except for the Scandinavian coun-

¹ This language was used in the Colorado law of 1903, the Missouri law of 1909, and the Tennessee law of 1905. See Grace Abbott, "Abstract of Juvenile Court Laws," in Breckinridge and Abbott, *The Delinquent Child and the Home* (New York: Russell Sage Foundation, 1912), Appen. III, p. 247.

² Grace Abbott, "History of the Juvenile Court Movement throughout the World," *The Child, the Clinic and the Court*, pp. 271 and 272.

³ Local juvenile courts in some of the large cities of these countries were established before a national law was passed.

tries, which adhered to the theory that children should not be tried in courts at all and gave the responsibility of caring for delinquent children to child welfare councils,¹ the juvenile court system was gradually adopted almost the world round. But during this period juvenile offenders against our federal laws continued to be indicted by the grand jury and tried in the courts as were other federal offenders. While the United States Children's Bureau called attention to what was happening to juvenile offenders against federal laws in a report published in 1922,² it was not until 1932 that Congress provided for the surrender of these children to the state authorities if they were also delinquent under the state law. This made it possible for child offenders against federal laws to be referred to the local juvenile courts (p. 432). The difficulty encountered in the carrying-out of this plan was that some of the states lacked adequate facilities for care, and surrender of the children was therefore often not practical. At the request of the attorney-general of the U.S. Department of Justice, a bill³ was passed by Congress in 1938 which will make it possible for the federal government to give or arrange for better care for these youthful federal offenders than was possible under the Act of 1932. The modified procedure provided for federal juvenile offenders under this act—the institution of proceedings by information instead of indictment by a grand jury, trial by the Federal District Court for delinquency rather than the commission of a specific offense, detention in a juvenile home, probation, etc.—applies to minors under seventeen years of age who have not committed an offense punishable by death or life imprisonment (p. 435). Under the act the attorney-general has authority to arrange for the care and custody of these federal child offenders by any public or private agency, although probation will undoubtedly, as in the states, be the most common form of treatment.

By 1919 all the states of the United States except Connecticut,

¹ For an account of the work of these councils with dependent, neglected, and delinquent children, see *Child Welfare Councils (Denmark, Norway, Sweden)*, League of Nations Publications, Social, 1937, IV. 1.

² Ruth Bloodgood, *The Federal Courts and the Delinquent Child: A Study of the Methods of Dealing with Children Who Have Violated Federal Laws* (Publication No. 103; Washington, D.C., 1922).

³ H.R. 10694, 75th Cong., 3d sess.

Maine, and Wyoming had enacted a juvenile-court law, and these states were not without some legislation regarding the problem usually assigned to juvenile courts.¹ The questions as to the constitutionality of juvenile-court laws were decided during this period (p. 401), and the way was cleared for a determination of what a greatly modified court could accomplish in the treatment of delinquency.

While the state laws have been and still are broadly similar, they differed in many details.² Some of the differences which have especially affected the work are whether broad equity jurisdiction is given the court, what age limitation is established, and whether the probation officers are appointed by the judge or by civil service examination.

In the early days of the juvenile-court movement it was discovered that the judge alone was unequal to the new tasks which the juvenile-court laws laid upon him. Applying a sentence fixed by the law after a determination of guilt was a simple matter compared to treatment with a view to cure. As this was appreciated, a series of auxiliary services and clinics were set up, usually, however only in metropolitan centers, to advise and assist the court. The first psychiatric clinic which was attached to the Cook County Juvenile Court in Chicago in 1909 enabled the psychiatrist to get his first opportunity to study the personality problems of delinquent children and suggest methods of treating them. While the door of opportunity has been opened much wider to the psychiatrist in the intervening years, the court organization has been found to be unsuited to psychiatric treatment, and the addition of the psychiatrist and improvement in the probation services have not resulted

¹ S. P. Breckinridge and Helen R. Jeter, *A Summary of Juvenile-Court Legislation in the United States* (U.S. Children's Bureau Publication No. 70; Washington, D.C., 1920), p. 9.

² Three summaries of the juvenile-court legislation showing the progress made have been published. They are found in Breckinridge and Abbott, *The Delinquent Child and the Home* (New York: Russell Sage Foundation, 1912), Appendix III, "Abstract of Juvenile Court Laws," by Grace Abbott; Breckinridge and Jeter, *A Summary of Juvenile-Court Legislation in the United States* (U.S. Children's Bureau Pub. No. 70; Washington, D.C., 1920); and White House Conference on Child Health and Protection, *The Delinquent Child; Report of the Committee on Socially Handicapped—Delinquency* (New York: Century Co., 1932), pp. 270-79.

in the increased percentage of "cures" by the courts that was expected. As a result, the findings of all the reports of recent studies of the results obtained by the juvenile courts have been very discouraging to those who hoped the juvenile court would, if not prevent, at least greatly reduce, delinquency.

Certain conditions we now know predispose a child to delinquency—insecurity in the child's home, lack of understanding or indifference on the part of parents to the emotional life and needs of the child, the extent to which the school supplies the kind of training helpful to him, the social conditions of the neighborhood in which he lives, the children with whom he plays, as well as his own physical, mental, or emotional weaknesses.

Scientific study of the delinquent child is very recent. We can expect further study to result in greater success in treatment. But this will mean that increasingly the expert must be relied upon to determine the treatment and carry it out.

In view of the complicated causes of delinquency, it is not surprising that studies of the work of juvenile courts have shown a very small percentage of "cures." The Glueck study of the Boston court showed 88 per cent of the 1,000 delinquents cared for since 1922 were again delinquent at some time or times during the five succeeding years.¹ These failures do not mean that a satisfactory adjustment might not be made by many of the boys as they grow older and more mature. Nor does this or any other recent investigation that has been made give us a final judgment on what the juvenile courts might do as compared with what they have done if their diagnostic and treatment resources were better and more wisely used by the judge. But with the evidence in hand it is necessary to recognize that there are certain fundamental difficulties in the use of a court as the exclusive or leading community agency for dealing with the problem of juvenile delinquency. The juvenile-court judge begins, except in a few very unusual instances, with no training or experience in the problems that come before the court.

In probably as high as 90 per cent of the cases involving delinquents which are brought before the juvenile court the facts are

¹ Sheldon and Eleanor T. Glueck, *One Thousand Juvenile Delinquents: Their Treatment by Court and Clinic* (Cambridge: Harvard University Press, 1934), p. 151.

not in dispute. The question before the court is, what should it do for a boy who has been stealing, staying out all night, or who is troublesome or a truant at school, or one who is a neighborhood bully. Or how can the girl who has had irregular sex relations and is in conflict with the standards of her home and society be helped. A small percentage of the cases involve decision as to the custody of children, commitment against the wishes of the parents and the juvenile to an institution or a foster-home, and present an "issue" for the judge to settle. The judge's legal training and his experience in private practice and in political and civic undertakings cannot be said to have prepared him to decide what the treatment of the individual delinquent should be. On the contrary, his training and experience predispose him to believe the authority of the court and a lecture by him will cure deep-seated causes of antisocial conduct. His understanding of conduct problems and knowledge of treatment is that of the average layman, and no more.

While the trappings of a court are sometimes regarded as of positive value in impressing the child and his parents with the seriousness of antisocial conduct, "fear" and "authority" are not the roads to an understanding of the causes of delinquency or the correction of conditions in the home, the school, and the neighborhood that are contributing factors in delinquency. Study of delinquent behavior by Burt, Alexander, Aichhorn, Healy, and others has revealed that both fear and the desire to resist constituted authority are common causes of misconduct. With such juveniles the court, because it occupies a position of authority, may aggravate rather than cure delinquency. Studies of individual delinquents have shown that because of the child's tendency to dramatize his conduct and relationships he sometimes enjoys and wants to repeat, instead of avoid, the court experience. Such children are not awed—they enjoy having judge, parents, social workers, and others considering what shall be done with them. On the other hand, the court experience is to some children an added humiliation, another evidence of failure, which retards the development of the self-respect and self-confidence which are necessary for recovery.

A court experience may, it is true, be of value to some boys who are merely mischievous and do not realize where their desire for

fun and excitement may lead them. The authority of the court together with the helpful supervision of the probation officer enables them to right themselves. But in a large number of cases the authority of the court, instead of being of assistance, is probably a frequent factor in its failure to help the children and their parents.

There are other difficulties connected with the court. Usually elected, juvenile-court judges have in general not been outstanding representatives of the legal profession. Nor would they be if any other method of choosing them were substituted. As the problems presented are not legal but social and psychiatric, a lawyer cannot be expected to choose this field unless he prefers social service to law, in which case he must begin a new course of training.

A final objection to the court as the community treatment agency for the conduct problems of children is that, however changed in procedure and objectives, it is still a court. Parents, teachers, and others will not turn to it for help until the conduct problems of children seem to them serious. They have fundamental feelings about "law" and "courts" which make it seem unfair to the juvenile to take him to a court until it is "necessary," which means that the unraveling of the child's difficulties is greatly delayed. These children have usually suffered in the home, the school, and the neighborhood from too much authority. What is needed is an understanding of their individual problems and scientific treatment on the basis of the diagnosis of their difficulties.

It is because of a growing appreciation of these fundamental difficulties that the juvenile court has not occupied the place in the community that it did before 1910. At first social workers and teachers referred children believed by them to have delinquent tendencies to the court, as they did those who showed evidence of physical disease to a clinic. However, as students of the subject realized that the problem was one of case-work treatment of the causes that resulted in delinquency and the work of the court was often inferior to that of the referring agencies, it became apparent that what was needed was expertness in the diagnosis and treatment of the mental and emotional as well as the social and economic problems of the individual delinquent. The child-guidance clinics enabled psychiatrists and psychiatric social workers to study the personality problems of

individual children and acquire a degree of expertness which had not before been available. At first too much was expected from the psychiatrists who had much to learn about the emotional life of children. But continued study with treatment on the basis of what is now known makes the outlook for successful treatment of the children better than it has been.

The schools unfortunately continue to send large numbers of truants to the courts, although the teacher's lack of understanding and her own personality problems or the fact that the educational system is not organized to meet the individual needs of children may have led the child to absent himself from school. Many truant officers and school principals, who still rely on law enforcement rather than the discovery and correction of the causes of truancy and other conduct problems, continue to expect that troublesome, exasperating children and parents are going to be made good by the authority of the court, or, at any rate, they have been relieved of responsibility by placing it upon the court. It would be simple if authority could be a substitute for understanding the child and for the patient, skilled solution of the difficulties in himself and his environment.

The question then is whether the juvenile court should be continued and developed as the state's case-working agency for these children, and, if not, what its function should be. It seems a safe conclusion to make on the basis of experience in the United States, that we should not continue to ask a judge to decide what should be done for children requiring not legal but psychiatric and social treatment. When compulsory commitment or removal from the home is necessary, under our traditions, a court instead of an administrative agency must decide the question. In this connection, however, it may be noted that in the Scandinavian countries, where juvenile courts have not been created, official child welfare committees have for some years decided even such questions as removal from parental custody and commitment to institutions.

In view of the high hopes of a generation ago, it is discouraging to discover the limitations of the juvenile court. No mistake was made in taking children and young persons out of the jurisdiction of the criminal courts and creating specialized courts for dealing with

them. It was a constructive solution on the basis of our knowledge of delinquency at the beginning of the century. Through the juvenile courts the legal questions involved in the change from punishment to treatment with a view to cure have been decided. Moreover, through the specialized courts the child and his problems have emerged.

The outlook for more intelligent treatment of minors just above the juvenile-court age is unfortunately much less encouraging. This is the age period when antisocial behavior manifests itself most frequently. In a few states efforts have been made under what are called "wayward minors" laws for special provision for young people who are regarded as in "moral danger."¹ But the scope of these laws has been very limited and the auxiliary services provided have been inadequate, so that little or nothing has been accomplished by these experiments.

The Chicago "Boys' Court," a special branch of the Municipal Court, established in 1914, was the first court to be given jurisdiction over boys above the juvenile-court age and under twenty-one who are charged with misdemeanors or quasi-criminal offenses. In the reports of the clerk of the court their offenses are classified as robbery, burglary, larceny, larceny of automobiles, violation of liquor laws, motor vehicle violations, and disorderly conduct. That a separate court for these boys between seventeen and twenty years of age is desirable cannot be questioned, but a real test of the usefulness of the Chicago court has not been made because it has lacked clinical resources, an adequate staff of trained investigators and probation officers, and the variety of treatment agencies and institutions suited to the varying needs of individual boys.

There has been little scientific study of the problems presented by delinquent minors who are above the juvenile-court age, nor is the public yet willing to have treatment of the causes of their misdemeanors substituted for punishment. As a result, the problems and methods of organizing for the treatment of boys of this age group have not emerged as have those of the juvenile-court age.

¹ See especially *Compiled Laws of Michigan*, 1915, chap. 64, secs. 2011, 2013, 2015, as amended in 1927, Act No. 127, p. 179; *Pennsylvania Laws of 1915*, Act 433, as amended by Act 328, *Laws of 1917*; *Laws of New York*, 1923, chap. 868, as amended in 1925, chap. 389, and 1929, chap. 106.

Because it is believed that students will be interested in the provisions of the British juvenile-court law of 1933, which was adopted after some years of study and investigation by a Departmental Committee, it is included in the documents (p. 445). The rules and regulations governing the approved schools which are maintained either by the local governments or private agencies give not only the method of care which the Home Office insists upon but afford an interesting example of central regulation and supervision of local agencies. Perhaps more space has been given to corporal punishment in these institutions and by the courts than is justified. But there is in the retention of this method of treatment and the realistic attempt to discover its values or disadvantages an interesting example of how the British government attacks a problem of this sort. It should be remembered that, while condemned by public opinion in the United States and neither authorized nor justified by the results, corporal punishment is frequently resorted to in some, if not many, of our state institutions which are directed by men who are without training in scientific methods of treatment and believe that they cannot maintain discipline without it.

A discussion of a public program for the treatment of delinquency, however brief, makes clear that better provision to meet the needs and interests of all young people is necessary. Reference must also be made to the fact that the economic condition of the family is a factor in delinquency. Economic failure affects adversely the child's confidence in his parents. Over and over again it has been pointed out that a child needs to be loved and wanted and to feel secure in his home. Dependency often makes it difficult, if not impossible, to maintain the most important traditions of the home; and wrongdoing on the part of children frequently results from the economic insecurity of their parents.

GRACE ABBOTT

1. The Common Law according to Blackstone

SIR WILLIAM BLACKSTONE: COMMENTARIES ON THE LAWS OF ENGLAND
IN FOUR BOOKS,¹ BOOK IV, CHAP. II, "OF THE PERSONS
CAPABLE OF COMMITTING CRIMES"

First, we will consider the case of *infancy*, or nonage; which is a defect of the understanding. Infants, under the age of discretion, ought not to be punished by any criminal prosecution whatever. What the age of discretion is, in various nations, is matter of some variety. The civil law distinguished the age of minors, or those under twenty-five years old, into three stages: *infantia*, from the birth till seven years of age; *pueritia*, from seven to fourteen; and *pubertas*, from fourteen upwards. The period of *pueritia*, or childhood, was again subdivided into two equal parts: from seven to ten and an half was *aetas infantiae proxima*; from ten and an half to fourteen was *aetas pubertati proxima*. During the first stage of infancy, and the next half stage of childhood, *infantiae proxima*, they were not punishable for any crime. During the other half stage of childhood, approaching to puberty, from ten and an half to fourteen, they were indeed punishable, if found to be *doli capaces*, or capable of mischief: but with many mitigations, and not with the utmost rigour of the law. During the last stage (at the age of puberty, and afterwards) minors were liable to be punished, as well capitally, as otherwise.

The law of England does in some cases privilege an infant, under the age of twenty-one, as to common misdemeanors; so as to escape fine, imprisonment, and the like: and particularly in cases of omission, as not repairing a bridge, or a highway, and other similar offences: for, not having the command of his fortune, till twenty-one, he wants the capacity to do those things, which the law requires. But where there is any notorious breach of the peace, a riot, battery, or the like (which infants, when full grown, are at least as liable as others to commit) for these an infant, above the age of fourteen, is equally liable to suffer, as a person of the full age of twenty-one.

¹ 12th ed.; with notes and additions by Edward Christian; London, 1795.

With regard to capital crimes, the law is still more minute and circumspect; distinguishing with greater nicety the several degrees of age and discretion. By the antient Saxon law, the age of twelve years was established for the age of possible discretion, when first the understanding might open: and from thence till the offender was fourteen, it was *aetas pubertati proxima*, in which he might or might not be guilty of a crime, according to his natural capacity or incapacity. This was the dubious stage of discretion: but, under twelve, it was held that he could not be guilty in will, neither after fourteen could he be supposed innocent, of any capital crime which he in fact committed. But by the law, as it now stands, and has stood at least ever since the time of Edward the third, the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent's understanding and judgment. For one lad of eleven years old may have as much cunning as another of fourteen; and in these cases our maxim is, that "*malitia supplet aetatem*." Under seven years of age indeed an infant cannot be guilty of felony; for then a felonious discretion is almost an impossibility in nature: but at eight years old he may be guilty of felony. Also, under fourteen, though an infant shall be *prima facie* adjudged to be *doli incapax*; yet if it appear to the court and jury, that he was *doli capax*, and could discern between good and evil, he may be convicted and suffer death. Thus a girl of thirteen has been burnt for killing her mistress: and one boy of ten, and another of nine years old, who had killed their companions, have been sentenced to death, and he of ten years actually hanged; because it appeared upon their trials, that the one hid himself, and the other hid the body he had killed, which hiding manifested a consciousness of guilt, and a discretion to discern between good and evil. And there was an instance in the last century, where a boy of eight years old was tried at Abingdon for firing two barns; and, it appearing that he had malice, revenge, and cunning, he was found guilty, condemned, and hanged accordingly. Thus also, in very modern times, a boy of ten years old was convicted on his own confession of murdering his bedfellow; there appearing in his whole behaviour plain tokens of a mischievous discretion; and, as the sparing this boy merely on account of his tender years might be of danger-

ous consequence to the public, by propagating a notion that children might commit such atrocious crimes with impunity, it was unanimously agreed by all the judges that he was a proper subject of capital punishment. But, in all such cases, the evidence of that malice which is to supply age, ought to be strong and clear beyond all doubt and contradiction [pp. 21-24].

EARLY TREATMENT OF CHILD OFFENDERS IN THE UNITED STATES

2. Punishment of the Disobedient Child

"AN ACT RESPECTING CRIMES AND PUNISHMENTS," APPROVED
MARCH 23, 1819, LAWS OF ILLINOIS, 1819

SECTION 10. *Disobedience of children and servants.*—*Be it further enacted,* That if any children or servants shall, contrary to the obedience due to their parents or masters, resist or refuse to obey their lawful commands, upon complaint thereof to any justice of the peace, it shall be lawful for such justice of the peace to send him or them so offending to the jail or house of correction, there to remain until they shall humble themselves to the said parents or masters' satisfaction: and if any child or servant shall, contrary to his bounden duty, presume to assault or strike his parent or master, upon complaint or conviction thereof before two or more justices of the peace, the offender shall be whipped not exceeding ten stripes [p. 216].

3. The Condition of Children in the Penitentiary and Bridewell, New York, 1819

MINUTES OF THE COMMON COUNCIL OF THE CITY OF NEW
YORK, 1784-1831, VOL. X

We beg earnestly to recommend to the consideration of the Board, the situation of the Children who are in the Penitentiary and Bridewell. There are now sixteen boys of from ten to sixteen years of age confined as felons. They have lately been in some degree separated from the Adult Convicts, and measures have been taken to give them instruction, but the benevolent intentions of the Board are as yet, very imperfectly executed. The Boys are not kept en-

tirely apart; the Buildings do not admit of their being so, without a sacrifice of more room than can be spared. At night they are shut up in cells by themselves, but in the day they mix with other convicts, who are necessarily admitted into the same hall. While this is the case, it is in vain to expect that a Sentence condemning a child to the Penitentiary will have any beneficial effect on his morals; on the contrary it is probable that his vicious inclinations will be strengthened by association with experienced Villains.

The Members of the Board, who are Judges of the Criminal Court, must often have felt how difficult it is, satisfactorily to dispose of these young culprits: if they are suffered to escape with a light punishment, they are sure to be presented at the Bar again, and very often it is evident that they are encouraged by, or made the instrument of older rogues. The Jury, as well as the Court, feel a reluctance to convict and condemn them, when it is believed that the infliction of punishment, by confinement in the Penitentiary, will tend to harden them in vice. If they could be effectually secluded and be instructed, there would be room to hope that imprisonment would sometimes produce reformation. In that case a confinement of some length might be considered as a less punishment than a shorter one. It would often be a service to the Young Vagabonds who prowl about our streets in idleness and ignorance, to place them where they would be for some time rescued from both.

If a building were to be erected capable of accommodating fifty boys—their keepers, instructors, etc.: with a School room below and sleeping apartments above, it would be attended with the most beneficial effects. The Ground lately added to the Establishment would afford ample room for such a building. We understand it might be erected for a Thousand Dollars and we think that sum could not be better employed.

It is due to the Reverend Mr. Sanford to mention the satisfaction with which we witnessed the good effects of his humane and pious labours. The School for convicts is under his superintendence. The progress of the boys in reading and in their moral lessons is evidence of his abilities and attention. We were present at his performance of divine service in the Hall of the Female Convicts and witnessed the impression made by his exhortations and prayers on

the feelings of many of the unhappy beings he addressed. We are persuaded that Mr. Sanford is well deserving such countenance and support as will induce him to continue his exertions to ameliorate the condition of the poor wretches, to whom he devotes so much of his time and pains [pp. 467-68].

(Signed) CADWALLADER D. COLDEN
PETER AUGUSTUS JAY

4. The Society for the Prevention of Pauperism on Prison Conditions, 1819

SECOND ANNUAL REPORT OF THE MANAGERS OF THE SOCIETY FOR THE
PREVENTION OF PAUPERISM IN THE CITY OF NEW-YORK
READ AND ACCEPTED, DECEMBER 29, 1819

The defects in the penitentiary system.—On the defects of the penitentiary system, your managers feel both regret and embarrassment—regret that so many abuses call for reform, and embarrassment that their remedies present so many perplexities. It is indeed a fruitful source of pauperism, and presents a spectacle of horror.

In speaking of the evils which its condition unfolds, we make no allusion to the keeper or superintendent; every thing wears the appearance of cleanliness and a regard to comfort, in the Bellevue Penitentiary; but we speak of the want of those barriers and partitions between the young and the old, the unfortunate convicts, and the aged and abandoned felon, which tend to prevent the most pernicious social communication, and the most atrocious confirmation of guilt. It appears upon inspection, that there are two divisions in the penitentiary, as to the female convicts. The white females compose one class, and the black females another. These two divisions include every kind of female convicts; such as prostitutes, vagrants, lunatics, thieves and those of a less heinous character. . . . With convicts of this character we place those novices in guilt, those unfortunate children from 10 to 18 years of age, who from neglect of parents, from idleness and misfortune, have never had a sense of morality, contravened some penal statute without reflecting on the consequences, and for a hasty violation, been doomed to the penitentiary by the condemnation of the law. And is this the

place for *reform*? More than three hundred wretches, of all ages and gradation in crime, are placed in a community by themselves, often without employment, without instruction, without admonition or advice, to become the subjects of reformation—to pass the ordeal of moral purification! . . . [pp. 31–32].

As to the male prisoners in the penitentiary, the managers are happy to say, that some reform has been made in their treatment. Until recently, boys from ten to eighteen years of age, were placed in a large apartment with hoary-headed felons, who had grown grey in vice and depravation, there to listen to their sarcasms on morality, their jests upon religion, or to oaths, imprecations and blasphemies. At present, the young and adult felons and convicts are in some degree separated, and partial instructions afforded to the former. We are sorry to be informed, by the mayor, that since he has administered our criminal jurisprudence, the unpleasant task has devolved on him, of sentencing boys, from twelve to fifteen and seventeen years of age, several times to the penitentiary. If any thing can blunt moral sensibility, and divest shame of her blush, and remorse of its poignancy, it is repeated arraignments and sentences at a criminal tribunal; and if any thing can destroy the ingenuousness and rectitude of youth, and open a road to ruin, it is the polluting society of those veterans in guilt and wickedness, who hold their reign in our prisons of punishment—it is the corrupting devices and conversations of thieves, burglars, counterfeiters, gamblers, perjurers, drunkards, vagrants, and peace breakers. These men have a language peculiar to themselves and their companions in iniquity, and none but converts to their standards of atrocity, can have a key to it. . . . Again we ask, is this the school of reform? Shall we send convicts in the morning of life, while the youthful mind is ardent and open to vivid and durable impressions, to this unhallowed abode, to be taught in all the requisites that will enable them to come forth when their term of imprisonment expires, more prepared to invade the peace of cities and communities? On this subject volumes could be written, and the fruitful topic of appeal and remonstrance scarcely exhausted. To say that this is not a great source of pauperism, and a nursery of crime and outrage, is denying the fairest deductions of reason.

But are there any remedies? The managers reply in the affirmative. A building could be erected at a moderate expense, within the precincts of the penitentiary, and moral, religious and elementary instruction afforded, especially to the younger convicts. The policy of erecting prisons upon a plan that will enable prisoners to be kept at work during the day, and each one lodged at night in separate rooms of small dimensions, is now prevailing throughout England, and should prevail throughout this county. A building will soon be finished at Pittsburgh, in Pennsylvania, on this plan, and one wing of the state prison at Auburn, in this state, conforms to it [pp. 35-36].

5. The Establishment and Early History of the House of Refuge in New York City

DOCUMENTS RELATIVE TO THE HOUSE OF REFUGE, INSTITUTED BY THE SOCIETY FOR THE REFORMATION OF JUVENILE DELINQUENTS IN THE CITY OF NEW YORK, IN 1824 (NEW YORK: MAHLON DAY, 1832)

(An abstract of a report of a committee of the society for the prevention of pauperism submitted to the legislature of the state of New York, with its request for the assistance of the state in building, equipping, and maintaining the House of Refuge.)

Every person that frequents the out-streets of this city, must be forcibly struck with the ragged and uncleanly appearance, the vile language, and the idle and miserable habits of great numbers of children, most of whom are of an age suitable for schools, or for some useful employment. The parents of these children, are, in all probability, too poor, or too degenerate, to provide them with clothing fit for them to be seen in at school; and know not where to place them in order that they may find employment, or be better cared for . . . [p. 13].

In order to arrive at a more correct understanding of the amount of the evils alluded to, the committee have to state, that they have been furnished by the District Attorney, H. Maxwell, Esq. with an abstract of those persons who were brought before the Police Magistrates, during the year 1822, and sentenced either to the City Bridewell from 10 to 60 days, or to the Penitentiary from 2 to 6 months. The list comprehends more than 450 persons, all under 25 years of

age, and a very considerable number of both sexes between the ages of 9 and 16. None of these have been actually charged with crime, or indicted and arraigned for trial. It includes those only, who are taken up as vagrants, who can give no satisfactory account of themselves;—children, who profess to have no home, or whose parents have turned them out of doors and take no care of them,—beggars and other persons discovered in situations which imply the intention of stealing, and numbers who were found sleeping in the streets or in stables . . . [pp. 13-14].

The design of the proposed institution is, to furnish, in the *first place*, an asylum, in which boys under a certain age, who become subject to the notice of our Police, either as vagrants, or houseless, or charged with petty crimes, may be received, judiciously classed according to their degree of depravity or innocence, put to work at such employments as will tend to encourage industry and ingenuity, taught reading, writing, and arithmetic, and most carefully instructed in the nature of their moral and religious obligations, while at the same time, they are subjected to a course of treatment, that will afford a prompt and energetic corrective of their vicious propensities, and hold out every possible inducement to reformation and good conduct . . . [p. 21].

The following list is extracted from the four hundred and fifty cases of Juvenile Offenses, furnished by the District Attorney, from the Records of the Police Office, for 1822.¹

David B. aged 12, brought up by the watch, charged with stealing, vagrant thief; 6 months Penitentiary.

William H. goes about begging, no home or business, a vagrant; 6 months Penitentiary.

George D. aged 14, father dead, mother in Baltimore, picks up chips, begs for victuals, and steals, vagrant thief; 6 months Penitentiary.

Francis J. aged 17, has no money, no clothes, no residence; 4 months Penitentiary.

Jane Ann S. aged 14, has been twice in Bridewell; 6 months Penitentiary.

Alfred C. aged 13, was brought up, having been found sleeping in some shavings, destitute, and no home; 6 months Penitentiary.

Charles M., John B. and Jacob B., ages 14, were found sleeping at night in a boat, no homes, no parents; 6 months Penitentiary.

¹ [Appendix A to the report submitted to the legislature by the Society for the Reformation of Juvenile Delinquents.—EDITOR.]

William S. aged 11, his father turned him out of the house, was found sleeping in a boat at night; 6 months Penitentiary.

Edward Van C. aged 13, was found at night sleeping on the side-walk, has been once in Bridewell, no parents; 6 months Penitentiary.

John H. aged 13, was found at night sleeping on the side-walk, no parents; 6 months Penitentiary.

John C. aged 14, has no parents, was found sleeping in a yard on some shavings; 6 months Penitentiary . . . [pp. 28-30].

THE EARLY LEGISLATIVE HISTORY OF THE REFUGE

[The Society for the Reformation of Juvenile Delinquents in the City of New York was incorporated by an Act of the Legislature March 29, 1824, and authorized the Managers of the Society] to receive and take into the House of Refuge, to be established by them, all such children who shall be taken up or committed as vagrants, or convicted of criminal offences in the said City, as may in the judgment of the Court of General Sessions of the peace, or of the Court of Oyer and Terminer in and for the said City, or of the Jury before whom any such offender shall be tried, or the Police Magistrates, or the Commissioners of the Alms-House and Bridewell of the said City, be proper objects, and the said Managers shall have power to place the said children committed to their care, during the minority of such children, at such employments, and to cause them to be instructed in such branches of useful knowledge, as shall be suitable to their years and capacities; and they shall have power in their discretion to bind out the said children with their consent as apprentices or servants during their minority, to such persons, and at such places, to learn such proper trades and employments as in their judgment will be most for the reformation and amendment, and the future benefit and advantage of such children: *Provided*, that the charge and power of the said Managers upon and over the said children, shall not extend in the case of females beyond the age of eighteen years . . . [p. 304].

"AN ACT IN AID OF THE MANAGERS OF THE SOCIETY FOR THE REFORMATION
OF JUVENILE DELINQUENTS IN THE CITY OF NEW YORK"

PASSED APRIL 9, 1825

[Provided for payment to the House of Refuge from the state Treasury of \$2,000 a year for a period of five years (p. 305)].

"AN ACT TO AMEND THE ACT, ENTITLED 'AN ACT TO INCORPORATE THE SOCIETY FOR THE REFORMATION OF JUVENILE DELINQUENTS IN THE CITY OF NEW YORK,' PASSED MARCH 29, 1824, AND FOR OTHER PURPOSES," PASSED JANUARY 28, 1826

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That the Managers of the Society mentioned in the act hereby amended, shall receive and take in the House of Refuge, established by them in the City of New-York, all such children as shall be convicted of criminal offences, in any city or county of this state, and as may in the judgment of the court before whom any such offender shall be tried, be deemed proper objects; and the powers and duties of the said Managers in relation to the children which they shall receive in virtue of this act, shall be the same in all things, as are prescribed and provided by the act entitled, "An act to incorporate the Society for the reformation of Juvenile Delinquents in the city of New-York," passed March the 29th, 1824, in respect to children which the said Managers have received, or may receive in virtue of that act . . . [p. 305].

[Provides for payment of annual surplus in Marine Hospital fund to the Society.]

And be it further enacted. That the sheriffs of the several counties of this state, shall be allowed for the transportation of any Juvenile Delinquents according to the provisions of this act, the same compensation as is now given by law for the transportation of convicts to the state prisons, to be audited and paid by the supervisors of the respective counties, as part of the contingent expenses of the said counties: *Provided,* That after notice shall be given by the Managers of the said Society, that there is not room for the reception of any further delinquents, it shall not be lawful to transport any other delinquents, until notice shall be given that they can be received.

And be it further enacted, That the legislature may at any time repeal, amend, or modify this act.

CHAPTER 1ST, TITLE 7, SECTIONS 17 AND 18 OF THE REVISED
STATUTES, PAGE 701, VOL. 2

Whenever any person under the age of sixteen years, shall be convicted of any felony, the court, instead of sentencing such person to imprisonment in a state prison, may order that he be removed to

and confined in the House of Refuge, established by the Society for the Reformation of Juvenile Delinquents in the city of New-York; unless notice shall have been received from such Society, that there is not room in such House for the reception of further delinquents.

Such convicts shall be removed by the sheriff of the county, pursuant to such order, and he shall be allowed the same compensation therefor as is provided by law for the transportation of convicts to the state prison, to be audited and paid as part of the contingent expenses of the county.

"AN ACT TO CREATE A FUND IN AID OF THE SOCIETY FOR THE REFORMATION OF JUVENILE DELINQUENTS, IN THE CITY OF NEW-YORK AND FOR OTHER PURPOSES," PASSED APRIL 29, 1829

SECTION 1. [Provides for \$8,000 to be paid the Society annually from the Marine Hospital Fund.]

SEC. 2. [Further provisions about the Hospital Fund and repeal of previously enacted conflicting statutes.]

SEC. 3. [One dollar and a half added to the liquor license for the benefit of the Society.]

SEC. 4. [Provides annual license for theaters, circuses, etc. in New York City.]

SEC. 5. [License fee of \$500 for theaters and \$250 for circuses to be paid over to the Society by the Treasurer of New York City.]

SEC. 6. [Provides for accounting of Hospital monies.]

SEC. 7. [The Health Commissioner is authorized to keep at his discretion a commission of not less than $2\frac{1}{2}$ nor more than 10 per cent of the Hospital money collected for the Hospital Fund from coasting vessels [pp. 306-8].

THE HOUSE OF REFUGE IN NEW YORK CITY IS OPENED IN 1825
FIRST ANNUAL REPORT, 1825

On the first day of January last, the board met and opened the Institution, in presence of a considerable concourse of citizens (among whom were several members of the Corporation) who assembled to witness the ceremony of the introduction of a number of juvenile convicts, the first in this city, if not in this country, into a place exclusively intended for their reformation and instruction.

The ceremony was interesting in the highest degree. Nine of those poor outcasts from society, 3 boys and 6 girls, clothed in rags, with squalid countenances, were brought in from the Police Office, and placed before the audience. An address appropriate to so novel an occasion was made by a member of the board, and not an individual, it may safely be affirmed, was present, whose warmest feelings did not vibrate in unison with the philanthropic views which led to the foundation of this House of Refuge. . . . The whole number admitted into the house, from its commencement to the present time, is 73. They have been received from the following sources, viz:— [pp. 40-41].

From the Court of Sessions, for grand larceny	1
From the Court of Sessions, for petit larceny	9
From the Police Magistrates, for stealing and vagrancy . . .	47
From the Commissioners of the Alms-House, for stealing, vagrancy, and absconding	16
Total	73

The employment of the girls, in addition to the needful domestic occupations, has been chiefly the plaiting of grass; and although they have not yet advanced sufficiently to render their skill of much pecuniary advantage, many of them have made attainments, in this branch, which justify the belief, that it may become a source of profit to the Institution, and the means of honest support to them when discharged.

The most considerable occupation of the boys, has been the clearing up of the premises, by the removal and disposal of the lumber, sheds, &c., clearing and cultivating a small garden, and more especially in waiting upon, and assisting the masons and carpenters that have been engaged in various repairs, elevating the wall, and erecting a new building within the enclosure . . . [p. 43].

About two hours in the day, one in the morning and one in the evening, are devoted to mental improvement. During the first hour, they are occupied in learning to spell, read, write, and cypher, and in this exercise the system of mutual instruction is followed, and they are divided into classes agreeably to the method pursued in the Lancasterian schools.

On that system the

1st Class learn the Alphabet.

2d Class words and syllables of two letters.

3d Class words and syllables of three and four letters.

4th Class words and sentences from Scripture of five and six letters.

5th Class words and sentences from Scripture of two syllables.

6th Class words and sentences from Scripture of three syllables.

7th Class words and sentences from Scripture of four syllables.

8th Class includes the best readers, who spell and write words, with their meanings attached, and read the Old and New Testaments. Arithmetic, as far as Compound Division, is divided into nine classes each class advancing a single rule. This explanation will enable us to understand the following statement of the Superintendent, relative to the improvement of a number of his subjects . . . [p. 44].

It will be proper to observe, that from the best estimates that can be drawn from the facts at present before the Board, it appears that the daily average cost of each subject, for clothing, food, fuel, light, hospital and school expenses, is 13 and 1-10 cents. This estimate is formed from the average number of 41 children, from the first of January to the first of October, embracing the first nine months of the first experiment of such an establishment . . . [p. 53].

THE WORK OF THE CHILDREN OF THE HOUSE OF REFUGE SIXTH ANNUAL REPORT, 1831

WORK DONE BY THE BOYS

Cane chair bottom manufactory.—Cane Chair Bottoms, 351 dozen plain Maple Seats, 294 dozen plain solid fronts, 143 dozen Curled and Birds Eye fronts, 18 dozen curled sewing chair fronts, 24 dozen curled solid front, raised back, and box seat, 17 dozen large seats and backs caned for arm chairs [totaling] 847 dozen. 39 settee seats.

Brush manufactory.—1000 dozen Shoe Brushes, 200 dozen Scrubbing Brushes, 600 dozen Hair Brushes, 500 dozen Cloth Brushes, 100 dozen Horse Brushes, 50 dozen Hat Brushes, 50 dozen Flesh Brushes, 10 dozen Nail Brushes, 10 dozen Table Brushes, 2000 pound Bristles, assorted and combed, 1400 pound Bristles picked, 1400 pound Bristles washed and bleached, 1000 dozen Shoe Brushes finished, 200 dozen Scrubbing Brushes finished, 600 dozen Hair Brushes finished, 500 dozen Cloth Brushes finished, 100 dozen Horse Brushes

finished, 50 dozen Hat Brushes finished, 50 dozen Flesh Brushes finished, 10 dozen Table Brushes finished.

Shoe shop.—The boys make and mend all the shoes used by the subjects in both houses. New shoes made for the use of the house, past year, 400 pair. Mended, a large quantity.

Carpenters' shop.—Soap and Candle Boxes, 20,175.

OTHER WORK DONE BY THE BOYS

Tilling the grounds; working in the gardens. All the cooking for the Male House, has been done by them: they whitewash and cleanse their own apartments, and mend all their woollen clothes; pick wool; cut roots and sarsaparilla; clean and sort gums and drugs for Apothecaries, &c., &c.

WORK DONE BY THE GIRLS

Shirts made.....	300	Pillow Ticks.....	16
Pantaloon.....	702	Bolsters.....	1
Roundabouts Jackets.....	527	Stockings run, (pair).....	439
Chemises.....	106	Stockings footed, (pair).....	16
Frocks.....	151	Spreads made and quilted....	18
Aprons.....	82	Brown Rollers.....	125
Waistcoats.....	45	Diaper Towels.....	12
Petticoats.....	44	Brown Towels.....	12
Night Caps.....	116	Pantaloon mended.....	2178
Vandikes.....	104	Shirts mended.....	2628
Pillow Cases.....	104	Bed Ticks mended.....	114
Sheets.....	209	Blankets mended.....	360
Pillows.....	8	Sheets made for Hospital.....	24

Pieces washed, 46,800 [pp. 241-42].

BUDGET, 1831

SEVENTH ANNUAL REPORT, 1832

THE SOCIETY FOR THE REFORMATION OF JUVENILE DELINQUENTS IN
ACCOUNT CURRENT WITH CORNELIUS DU BOIS TREASURER

Dr. 1831, Jan. 1, to Jan. 1, 1832

To Balance due the Treasurer	\$ 2,242.67
To Cash, Clothing, for the Children	1,492.50
To Cash, Food and Provisions, for the Children	4,807.56
To Cash, Furniture, Beds, Bedding, &c.	961.29
To Cash, Coal, Wood, Oil, Stoves, &c.	1,100.76
To Cash, School and Hospital Expenses, Books, Paper, Stationery, Medicine, &c.	189.12
To Cash, Salaries of the Superintendent, Assistants, Schoolmaster, Matron, &c.	3,346.45
To Cash, Premium of Insurance against Fire	76.63
To Cash, Interest on Money borrowed	34.97
To Cash, Printing Annual Report, Account Books, Sta- tionery, &c.	110.72 ¹
To Cash, Horse, Cows, &c. for the use of the Institution. . .	447.84
To Cash, Chair Shop, Maple plank and boards, rattan and tools, to furnish mechanical employment for the boys	2,489.83
To Cash, Building, Repairs, Additions, &c.	2,582.54
To Cash, Paid Finance Committee per order of the Board. .	6,737.73
	<hr/>
	\$26,620.61

1831, Jan. 5

To Balance brought down due the Treasurer	\$ 1,046.10
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Cr. 1831, Jan. 1, to Jan. 1, 1832

By Cash received for the Labor of the Children in the different Work Shops	\$ 2,953.36
By Cash from Marine Hospital Fund (a part of the Sur- plus Funds arising from a tax upon Foreign Passengers)	8,000.00
By Cash, tax upon Tavern Licences, due and collected in 1830—(paid this year)*	4,564.50
By Cash, Tax upon two Theatres and one Circus, due and collected in 1830—(paid this year)	1,250.00
By Cash, Tax upon four Theatres for 1831	2,000.00
By Cash from Corporation of City of New-York, from Excise Fund	4,000.00
By Cash for sales of Chair Bottom Seats, manufactured by the boys—and stock of Raw Materials, Tools, &c. . .	2,524.82
By Cash, donations, subscriptions, &c.	281.83
By balance due the Treasurer	\$ 1,046.10

* The law imposing the above Tax has been repealed [p. 250].

FOOD, CLOTHING, AND PUNISHMENT OF HOUSE OF REFUGE CHILDREN
 RULES AND REGULATIONS FOR THE GOVERN-
 MENT OF THE HOUSE OF REFUGE

[Among the rules and regulations adopted by the Society for the government of the House of Refuge are the following:]

The introduction of labor into the House of Refuge will be regarded principally with reference to the moral benefits, and not merely to the profits, to be derived from it.

Preference will be given to those trades, the knowledge of which may enable the delinquents to earn their subsistence, on their discharge from the House.

Food.—The Children shall be fed with a sufficient quantity of coarse, but wholesome Food, and in conformity with a Dietary to be established by the Acting Committee.

The greatest economy and plainness shall be used in furnishing food for the children. The Superintendent shall inspect every article, and take care that nothing unsound be admitted into the House, and that the contracts made for its supply are fairly executed.

Clothing.—The Children shall be clothed in coarse, but comfortable apparel, of the cheapest and most durable kind. The cloth to be of a uniform color, and the clothes of the same cut or fashion. All the clothes, garments, shoes, &c. must, if practicable, be made on the premises, and by the children.

Kinds of punishments that may be used in the House of Refuge.—(1) Privation of play and exercise; (2) sent to bed supperless at sunset; (3) bread and water, for breakfast, dinner, and supper; (4) gruel *without salt*, for breakfast, dinner, and supper; (5) camomile, boneset, or bitter herb tea, for breakfast, dinner, and supper; (6) confinement in solitary cells; (7) corporal punishment, if absolutely necessary; (8) fetters and handcuffs, only in *extreme cases*.

CLASSIFICATION

The Boys and Girls shall be classed according to their moral conduct, and as soon as practicable there shall be four grades of classes formed, viz: Nos. 1, 2, 3, 4.

Class No. 1, shall include the best behaved and most orderly Boys and Girls: those who do not swear, lie, or use profane, obscene,

or indecent language or conversation, who attend to their work and studies, are not quarrelsome, and have not attempted to escape.

Class No. 2. Those who are next best, but who are not quite free from all the foregoing vices and practices.

Class No. 3. Those who are more immoral in conduct than Class No. 2.

Class No. 4. Those who are vicious, bad, and wicked.

Badges bearing the number of each class, shall be worn on the arm, at all times in the day.

In case of improper and bad conduct, the children in Classes, Nos. 1, 2, or 3, shall be transferred or degraded by the Superintendent to the lower or lowest Class. And for improvement, or good conduct, in Classes 4, 3, or 2, they may be transferred or promoted to a higher Class [pp. 275-79].

6. Report of Investigation of the Philadelphia House of Refuge in 1835

REPORT OF THE COMMITTEE APPOINTED TO VISIT AND EXAMINE INTO
THE AFFAIRS AND MANAGEMENT OF THE HOUSE OF REFUGE

Read in the House of Representatives, March 24, 1835¹

The Committee appointed by a resolution of the House of Representatives, of the eighteenth December last, "to visit and examine into the affairs and management of the House of Refuge, situate in the county of Philadelphia, and to make report touching its usefulness and economy, and also report how far the present organization of the House of Refuge is conformable to the principles of its original establishment, and also how far the imprisonment of persons in that institution, without the verdict of a jury, is conformable to the letter and spirit of the constitution," *Report*, viz.:

That in obedience to said resolution, the committee met in the city of Philadelphia; and, having made known to the Board of Managers the object of their visit, and having furnished them with a copy of the resolution under which they acted, every facility was promptly and cheerfully afforded by the board, to enable the committee to discharge the duties of their appointment.

¹ *Hazard's Register of Pennsylvania, Devoted to the Preservation of Facts and Documents, and Every Kind of Useful Information Respecting the State of Pennsylvania*, ed. Samuel Hazard, Vol. XV (January-July, 1835).

The committee proceeded, first, to examine the buildings of the institution, its inmates, the manner in which they are fed and clothed, the kind of labor in which they are employed, and the system of government and discipline adopted by the managers.

The inquiry contained in the resolution, "How far the present organization of the House of Refuge is conformable to the principles of its original establishment," will be answered by a reference to the original design of the founders of this benevolent institution, the law by which it was incorporated, and the facts which will be hereafter detailed.

The House of Refuge has been justly termed a place for the reformation of "juvenile delinquents." It originated in the best feelings of the heart. It is a work of charity. It was established at first by individual liberality and enterprise; and it is in a great measure conducted and sustained by the same liberal and philanthropic spirit. It was incorporated by an act of the Legislature, in 1826. An appropriation of ten thousand dollars was granted by the State; and by the same act ten thousand dollars were directed to be paid by the commissioners of the county of Philadelphia, out of the county funds, for defraying the expenses of a site and building a "House of Refuge," and also five thousand dollars for repairs and incidental expenses.

The buildings are substantial, and their arrangements judicious. The inmates present a healthy appearance; their clothing is comfortable, and their fare is abundant and wholesome. Their labour is suited to their age and capacity—regular, but not severe. Their government, so far as the nature of the case will allow, is parental.—They have their regular hours of labour, and instruction: while every attention is paid to induce habits of industry, the greatest possible care is had for their intellectual improvement. The ordinary branches of an English education are better acquired in the House of Refuge than in many of our country schools.

These remarks will apply to both the male and female departments. The committee were pleased to witness the great attention paid by the managers in affording the means of moral and religious instruction.—Stated periods are set apart for devotional exercise: the duty is performed with proper solemnity, and the most respectful attention is paid by all classes. Ministers of different denomina-

tions attend and preach alternately every Sabbath. The day is spent in giving and receiving instructions of the most useful kind; and these duties appear to be performed by all concerned with pleasure and profit.

The number of inmates at present is, of males, one hundred and three, of females, fifty four. A very great proportion of the children in the House of Refuge are orphans. Of the females, there are nearly three-fourths who have no parents; and such as have, in most instances, derive no advantages from them.

To this unfortunate class, the advantages of this institution are peculiarly adapted. Here their vicious tempers and habits are restrained—their minds improved—principles of virtue inculcated; and not a few, who were on the broad road to ruin, have been rescued from destruction and prepared for usefulness, and are now filling respectable places in society. Some of these instances have come under the special notice of your committee, and are referred to as an evidence to show that the benevolent designs of the founders of this institution have been realized, in reclaiming youthful offenders from the disgrace and ruin consequent on a confinement in a jail or penitentiary, to which their vicious practices would unavoidably have brought them.

The committee will now refer to that part of the resolution which requires them to report "How far the imprisonment of persons in the House of Refuge, without the verdict of a jury, is conformable to the letter and spirit of the constitution."

The committee do not think it necessary at this time to go into a full examination of this important and difficult question. The institution has been under the management and direction of some of the ablest jurists of the State: and they do not believe that any act would be done or encouraged by them which would be in violation of the constitution. However, it is highly probable that, in their laudable zeal to promote and effect the philanthropic end of the institution, some acts may have been done, either in the committal of inmates, or in the duration and cause of their confinement, inconsistent "with the letter and spirit of the constitution." It is, however, the unanimous opinion of the committee, that, if such errors have been committed, they were of the head and not of the heart; because they believe the managers were actuated by no other than

the most laudable motives—a zeal, an ardent and patriotic zeal, to rescue youthful delinquents from a course of conduct which would, if unrestrained, lead them to inevitable misery, degradation and ruin.

The committee is aware that there are conflicting opinions on this subject; but they believe that any argument of theirs would be unnecessary and superfluous, as the whole question has been ably stated and examined in the opinion delivered by Judge King, in the case of Commonwealth *ex relatione* Joseph against M'Keagy, superintendent, in the first volume of Ashmead's Reports; and by a paper signed by Messrs. Joseph R. Ingersoll and John Sergeant, and laid on the desks of members. The committee have prepared a bill, accompanying this report, which they believe will restrain the institution within the "spirit of the constitution" and laws, and will at the same time throw no obstacle in the accomplishment of this laudable end.

To enable the managers of the institution to carry their designs into effect, and continue to society the benefits of the House of Refuge, heavy expenses have been incurred which must be provided for. Individual contributions have been very liberal, and are still so; some large bequests have been given which are unavailable at present, but which will in a short time add much to its means. It will be recollected that the benefits of the institution are not confined to the city and county of Philadelphia—its doors are thrown open to the unfortunate objects of the institution from every county in the State, many of which have availed themselves of its advantages: for this reason and others, the Commonwealth has contributed to its support on former occasions, and in the opinion of your committee, should still bear a proportion of the expense of sustaining it until its own means are sufficient.

The annual reports of the managers render it unnecessary for your committee to go into much detail; but it is due to the managers to say that everything in their power has been done to render the institution useful, and to carry into successful effect the objects of its benevolent founders and proprietors. Much time and labour is spent in the management of its affairs; all of which is gratuitously bestowed; the same remark will apply to the clergymen who officiate in the institution, as well as the medical gentlemen who are constantly in attendance, on all occasions when their services are required.

The committee have seen and conversed with several persons who spent several years in the House of Refuge, who uniformly bear testimony to its usefulness, the ability with which it is conducted, the wholesomeness of its discipline, and who acknowledge themselves indebted to that institution for the respectable station they now hold in society.

With a view to remove all objections which may exist on the question of committal without trial by jury, the committee report a bill, which they trust will meet the views of the Legislature, and avoid the odium of a conviction in a criminal court, the effects of which are so sensibly felt by the youthful mind, and instead of producing reformation, generally tends to harden and confirm their vicious habits.

The committee cannot dismiss the subject without a passing notice of the qualifications of Mr. Edwin Young, superintendent, and Mrs. Catharine Shirlock, matron, for the stations by them respectively occupied; opportunity was not of course afforded to become so intimately acquainted with those individuals as would enable us to do full justice to them from personal intercourse, but we must say, that intelligence, benevolence, and a proper union of firmness and benignity, mark the whole deportment of each, and from information entitled to all credit, the committee believe their situations could not be better filled. To their parental care must greatly be attributed the extraordinary good order and decorum which pervades the institution; the salutary effects of virtuous female example and influence on erring individuals of that sex, is most happily illustrated in the family under the matron of that institution—there reigns throughout, all the propriety and harmony of a virtuous family, and many of the hapless inmates realize for the first time the pleasures of virtue, and are led by the force of moral influence, to loathe the scenes of vice and misery with which they have been familiar from infancy.

The committee will add, that from a careful examination of the books kept by the superintendent and managers, as well as every thing connected with their respective duties, their efforts have been directed, and they have succeeded in making the institution what it purports to be, a House of Refuge [pp. 216-17].

7. Charles Loring Brace on the Best Method of Reforming Delinquents

C. L. BRACE, SECRETARY OF CHILDREN'S AID SOCIETY: THE BEST METHOD OF DISPOSING OF OUR PAUPER AND VAGRANT CHILDREN (NEW YORK, 1859)

And now, in laying the foundation of a future system of Reform, and Prevention of juvenile crime and vagrancy—one which shall make America as much a blessing to the neglected classes, as it has been to the favored classes—it is doubly important that the *principles* of treatment should be clearly understood and carefully weighed.

It must be remembered, that the whole subject, though difficult, is in no way abstruse, or removed from the experience of common life. The children of the poor are not essentially different from the children of the rich; the same principles which influence the good or evil development of every child in comfortable circumstances, will affect, in greater or less degree, the child of poverty. Sympathy and hope are as inspiring to the ignorant girl, as to the educated; steady occupation is as necessary for the street-boy, as the boy of a wealthy house; indifference is as chilling to the one class, as to the other; the prospect of success is as stimulating to the young vagrant, as to the student in the college.

The great mistake we make in regard to the children of the poor, is our too rigid *classification*. It is true there is a certain similarity among them, but the grand truth more and more forces itself upon us, that each poor, deserted, unfortunate little creature in the streets is an *individual*, like no other being whom God has created. He has his own tastes—his own habits—his peculiar temptations—his especial weaknesses, and his own virtues. We may class him, from certain external resemblances, with a hundred or a thousand other lads, and yet he is still distinct and individual . . . [p. 4].

Nature seems especially to indicate small groups of parents and children, or old and young, as the best forming-institution for young minds. Children in large numbers together, in constant intercourse, appear never to exert a healthful influence on each other: in the higher classes, habits of deceit, and unnatural vices are spread among them; and in the lower, all the seeds of vice which might otherwise lie dormant, spring up and grow noxiously . . . [pp. 4-5].

The life in the Asylum or Refuge must correspond somewhat with the life outside. Labor should have reward, and virtue, honor. Laziness should bring after it suffering; and vices, disgrace. The virtues must not be drill-virtues; they must spring from the heart, and be exposed to the strain of temptation. A mere treadmill goodness, which has gone through a daily round of observances, under the pressure of force, is of little worth for every-day life. In every institution of reform, also, there should be allowed somewhere with the inmates, the *sense of property*, that with it may be cultivated the instinct of economy. Wherever the Reformatory fails of these stimuli to the character, it fails of one essential object of the treatment.

With all that can be derived from the excellent and self-sacrificing systems of English charity and reform for the young, we cannot but feel that a great error has been committed in America by a too close imitation of them. The essential conditions of the problems are unlike in the two countries. The relations of Labor and Capital, and the personal position of the working class, are altogether different here from what they are in England.

America has the accidental, but the immense advantage, of an unlimited demand for labor, especially for juvenile labor. In England, on the contrary—though in this respect a favorable change is commencing—the market is oversupplied, and the great difficulty in regard to each youthful criminal, or vagrant, or pauper, is to know what to do with him, even if he be reformed. The consequence is, that the English institutions are obliged to keep large numbers of children together, and their great attention is turned to what is a necessity to them—the management of young persons in masses.

Beside, in Great Britain, even if the youthful *detenue* were discharged, his position as a former member of a charitable institution or a Reformatory, would always tend to degrade him among a class already sufficiently depressed, so that we cannot wonder that the managers desire to retain the unfortunate subjects of their institutions as long as is possible.

We have imitated their method of treatment, without their reasons for it. We have crowded asylums and reformatories with young paupers and vagrants and petty criminals not yet inured in crime,

when a far more effective and more natural treatment was ready to our hand.

In applying these various errors of principle—namely, the want of individuality of treatment, the disregard of natural laws, and of the economic advantages peculiar to America—to our reformatory and preventive systems in this country, we shall find that great mistakes have been committed . . . [pp. 5-6].

The Emigration-plan of the Children's Aid Society, is simply to connect the supply of juvenile labor of the city with the demand from the country, and to place unfortunate, destitute, vagrant and abandoned children at once in good families in the country.

The plan will be seen to accord with the principles on which we started; it secures individual management for the child, it brings him under the great natural impulses which train the character most vigorously; it is in harmony with economic laws. The family is God's Reformatory; and every child of bad habits who can secure a place in a Christian home, is in the best possible place for his improvement . . . [p. 12].

Why, then, is not this effective and economic system adopted by those in charge of our public institutions for children? Mostly because of the prestige of older methods derived from other countries; and but in part because of certain honest objections in the minds of many persons.

It is feared that these children would corrupt the morals of the families to which they are sent, and that thus the enterprise would become an imposition and a nuisance to one portion of the country; and it is urged that they are the better for previous training in Reformatories. It is probably admitted that our community is better off for being relieved of the support of these children, and that the children are more likely to turn out well in a family than in a Reformatory; but it is feared that if they are bad, they will injure others who are innocent.

In reply, we must call attention to the utter impossibility of such a plan's being carried on long, if it produced bad effects. No power in the world could compel the country districts to receive a constant importation of confirmedly idle and criminal persons from this city. The character of the enterprise would be soon understood, and

if it was found to be corrupting families in the country, it would soon fall under a just public odium. . . . We must remind such persons of the wonderful capacity for improvement in children's natures under new circumstances; and we assert boldly, that a poor child taken in thus by the hand of Christian charity, and placed in a new world of love and of religion, is *more likely to be tempted to good, than to tempt others to evil.*

The fact is, such children of misfortune are, very often, by no means so bad as they seem. A considerable experience has alone confirmed this in our minds. The vice which in a child of better circumstances would be proof of an utter depravation of character, in these unfortunate creatures, victims of circumstances, is often only an external habit and soon eradicated by pure and kindly influence.

Under any discipline, a certain number will turn out badly; we only claim for this method fewer failures than under any other, and a work much more economical and extensive [pp. 13-14].

MASSACHUSETTS PROVIDES A NEW SYSTEM

8. The Board of State Charities Condemns Commitment for Minor Offences, 1869

FIFTH ANNUAL REPORT OF THE BOARD OF STATE CHARITIES OF MASSACHUSETTS, JANUARY, 1869

The attention of your Board is specially invited to this subject, because of some recent developments indicating an apparently increasing abuse of the statute regulating commitments to the Juvenile Reformatories. The spirit that can procure the sentence of a boy or girl to a penal institution, on some trifling or manufactured charge, for the purpose of saving expense, is criminally mercenary, if not inhuman; yet cases exist in which boys and girls have either been committed for no real crime or sufficient cause, or incarcerated in institutions designed for the more guilty and hardened, simply to avoid the payment of a petty, insignificant stipend. On this point Mr. Ames, the Superintendent of the Industrial School for Girls at Lancaster, makes this remark in his last Annual Report:—

There are instances where town authorities have exerted influence to have some other sentence passed by a justice, rather than to commit to the reforma-

tories; and, on the *simple* ground of expense to the town, youth have been sent to jail, there to mingle with older criminals, instead of being placed where they might receive not only restraining but reforming and saving influences.

The small pittance required from cities and towns for the support of their boys and girls in the Reformatories, is undoubtedly in many instances a source of gross fraud upon the Commonwealth, as well as irreparable wrong to those who are thus improperly committed [p. 153].

A glaring illustration of the wrong practises under the present system was accidentally discovered by a member of the Suffolk Grand Jury, during a recent visit of that Board to the Westborough Institution. The case was that of a boy committed for no actual crime, but on some trifling charge, because, as it is stated, the town, to whose pauper list he would belong, could save a dollar a week by procuring his admission and support at Westborough for fifty cents. . . . A modification of the laws relating to the commitment of juvenile offenders, and a proper charge for the support of those belonging to cities and towns, would go far to remedy the evil . . . [p. 154].

9. Probation and Supervision of Juvenile Delinquents, 1869

"AN ACT IN ADDITION TO AN ACT TO ESTABLISH THE BOARD OF STATE CHARITIES," MASSACHUSETTS ACTS AND RESOLVES,
1869, CHAP. 453

Be it enacted, &c., as follows:

SECTION 1. The governor, with the advice and consent of the council, shall appoint an agent¹ to visit all children maintained wholly or in part by the Commonwealth, or who have been indentured, given in adoption or placed in the charge of any family or person by the authorities of any state institution, or under any provision of this act.

He shall hold his office for one year, subject to removal by the governor and council, and shall receive an annual salary of twenty-five hundred dollars; and, with the approval of the board of state

¹ [In 1870 the visiting agent was placed under the Board of State Charities and his term made three years.—*Acts and Resolves of Massachusetts, 1870, chap. 359, sec. 1.*—EDITOR.]

charities, he may employ such assistants and incur such expenses as may be necessary for the discharge of his official duties.

SEC. 2. It shall be his duty to visit the children aforesaid, or cause them to be visited, at least once in three months, to inquire into their treatment, their health and their associations, and especially to ascertain whether their legal rights have been invaded, and whether all contracts or stipulations made in their behalf have been duly observed, and to collect such other information respecting them as the board of state charities may direct; and, for this purpose, he shall have the right to hold private interviews with the children, whenever he may deem it advisable.¹

SEC. 3. All applications to take any of the children above specified, by indenture, adoption or any other method fixed by law, shall be referred to the aforesaid agent, who shall investigate the character of each applicant, and the expediency of so disposing of the child applied for, and report the result to the board or magistrate having jurisdiction over the child, and no such child shall be indentured or otherwise disposed of until such report is received; and in case any child shall be placed in a home which the said agent may deem unsuitable, he shall forthwith report the facts to the board of state charities for their action thereon, and the governor and council may at any time annul any indenture by which such child may be held.

SEC. 4. Whenever application is made for the commitment of any child to any reformatory maintained by the Commonwealth, the magistrate before whom the hearing is to be held shall duly notify the visiting agent of the time and place of the hearing, by written notice mailed one week at least before the time of hearing, and directed to said agent at the state house, and the agent shall attend at said hearing in person or by deputy, in behalf of the child;²

¹ [Act of 1870, sec. 3, provided for a report on unsatisfactory indentures to the appropriate institution or board with a view to cancellation of the indenture; sec. 4, for investigation by the agent before a child is indentured, adopted, or placed in a home; and sec. 5 directs the agent to seek out suitable persons to take the children; sec. 6 provided a separate agent to arrange for and supervise indenture from the Girls' Industrial School.—EDITOR.]

² [This language was broadened by the Act of 1870 to include appearance in behalf of any child under sixteen on complaint for any offense not punishable by life imprisonment before a trial justice, police, or municipal court (sec. 7).—EDITOR.]

and if it shall appear to the said magistrate that the interests of the child will be promoted by placing him in a suitable family, he may, instead of committing him to a reformatory, authorize the board of state charities to indenture the child during the whole or a portion of his minority, or to place him in such family. And the board of state charities is hereby authorized to provide for the maintenance of any child placed in a family as aforesaid at an expense not exceeding the average cost of the support of such child in any of the state reformatories. And it shall be the duty of said agent to seek out families willing and suitable to receive such children, and furnish the names and places of residence of the same to the boards or magistrates who are to provide for the commitment or indenture of a child under this act: *provided*, that the provisions of this section so far as they require notice to the visiting agent shall not apply to the superior court.

SEC. 5. The visiting agent shall make a monthly report to the board of state charities of all his proceedings, especially concerning children placed in families under the fourth section of this act, and any person aggrieved by his action shall have the right of appeal to the board or magistrate having original jurisdiction of the child.

SEC. 6. The duties required in sections three and four of this act shall, in case of the industrial school for girls, be performed by the officers of that institution under the supervision of the board of state charities.

SEC. 7. The secretary of the board of state charities shall receive an annual salary of three thousand dollars from the first day of January of the present year.

SEC. 8. This act shall take effect upon its passage.

10. The Work of the Visiting Agent with the Juvenile Delinquents of Massachusetts

EIGHTH ANNUAL REPORT OF THE BOARD OF STATE CHARITIES
OF MASSACHUSETTS, JANUARY, 1872

There is a multitude of children in the Commonwealth who, owing to the ignorance, and the consequent evil habits of parents, are practically without guardianship; certainly they have none for good. . . . Under the old regime their entrance into life was upon the career of vice leading to crime, over which they rushed heedless along,

unconscious of guilt, until they dashed suddenly against the hard barriers of the law; and, for the most part, were broken by the shock. Broken in self-respect, in the respect of society, and broken in their hope of the future, they took to some criminal pursuit through lack of any other calling.

In order to break this shock, and to prevent the necessity of exercising penal discipline over them, an Agency was appointed to look after the interest of all youth brought, or about to be brought before a court; and to take charge of such as were convicted, but whom it was not necessary to send to a penal, or to a reformatory institution.

Again, the reformatory institutions and the State Primary School are constantly sending out children to be brought up in private families. It was absolutely essential that they should be visited and looked after, regularly, systematically and effectually. This never had been done either systematically or effectually; nor could it well be done by the means at the disposal of the several institutions from which they had been sent out.

This important duty, too, is assigned to the Visiting Agent. He must attend, personally or by deputy, at court, whenever notice is received that a youth under seventeen years of age is to be tried. He must "investigate the case, protect the interests, or otherwise provide for the child." The Agent received notices, during the last year, of fourteen hundred and sixty-three such cases, and he attended to all of them.

Eleven hundred and sixty-seven were adjudged guilty. Of these, two hundred and eighty-nine were simply fined. Of the eight hundred and seventy-eight remaining, five hundred and eighty-four were taken in charge by the Visiting Agent, and provided for, or placed out in families on probation . . . [pp. xxviii-xxix].

The important work of this Agency was performed by the Visiting Agent and eight assistants; the aggregate cost of whose salaries was \$11,760.93, and of incidental expenses, \$2,824.46. Total, \$14,585.39 . . . [p. xxx].

REPORT OF THE STATE VISITING AGENT

Some of the investigations were very full and complete, and all affected to a greater or less extent the disposition of every case. Oftentimes they formed the basis of defence or extenuation, and

in some instances they contained the only information, beside the accusation, upon which action could be taken. It may be noted here that it was seldom that there was any appearance before the courts for those juvenile offenders except by the Visiting Agency. . . .

Of the eleven hundred sixty-seven (1,167) found guilty, only two hundred thirteen (213) went into State reformatories; four (4) to a house of correction; two (2) to jails; forty-eight (48) to city institutions; twenty (20) to private institutions; two hundred and eighty-nine (289) were fined, paying only, however, in most cases, their proportion of the costs. One hundred and twenty-eight (128) of the convicted ones were taken by the Visiting Agent and provided for by him with but little immediate cost to the State and less prospectively; and four hundred fifty-six (456) were placed on probation [p. 230].

As an influence for restraining and reforming the probationers, we have called to our aid the various religious and benevolent organizations, both Catholic and Protestant, in whose parishes or fields of labor they may belong, as visitors and friends who give to them all the help that Christian perception discovers as their need.

The policy of the Agency during the year has been to secure, whenever it seemed wise to do so, the probation of those arraigned, especially in cases of first offence, and then make the probationary period available for their saving by watchfulness over them.

The result has justified that line of effort. Only thirty-nine (39) of the four hundred fifty-six (456) placed on probation during the year came again before the courts or became obnoxious to the officers of the law [p. 231].

EARLY INSTITUTIONS AND THEIR PROBLEMS

II. Mary Carpenter¹ on the Care of the Neglected and Criminal Children of the United States²

PROCEEDINGS OF THE CONFERENCE OF CHARITIES HELD IN CONNECTION
WITH THE GENERAL MEETING OF THE AMERICAN SOCIAL
SCIENCE ASSOCIATION, 1875

The question, to which it is proposed in this paper to offer an answer, is one of the most important which can concern a State . . . [p. 66].

It is no longer a question, either in the Old World or in the New, as it was some quarter of a century ago, whether the children ought to be saved. That has happily been long decided in the affirmative. The Prison Congress, which assembled in London in 1872, showed no difference of opinion in the principles to be adopted in the treatment of the children. But principles cannot be developed unless the conditions to which they are to be applied are well understood, and unless experience has enabled us to feel sure of the results of the agencies to be employed. My own experience in this work having now extended over a period of more than a quarter of a century, I venture to offer to this Congress some remarks founded upon it, and bearing on the condition and treatment of the criminal and neglected children in the United States.

During the visit which I made to this country in the summer of 1873, my time and attention were especially devoted to the study of the prisons and reformatory institutions of those cities through which I passed. My object was to study the principles on which these were established and the results of the working of those principles. I availed myself, on all occasions, of the opinions and experi-

¹[Mary Carpenter (1807-77), English philanthropist, formed the Working and Visiting Society in Bristol in 1835 and was secretary of the organization for over twenty years. In 1846 she opened a "ragged school" but was soon convinced that such schools would not meet the needs of the young criminal class. She opened a reformatory school for boys at Kingswood in 1852 and one for girls at Bristol in 1854, and was influential in securing passage of the Youthful Offenders Act of 1854 and Industrial Schools Act of 1857.—EDITOR.]

²[Paper prepared by Miss Mary Carpenter, of Bristol, England, and read by Mr. William P. Letchworth, of New York.—EDITOR.]

ence of persons who had studied the subject, and had acquired practical experience of the working of different systems . . . [p. 67].

It is unnecessary for me here to bring before you arguments to prove that it is the duty and interest of every State to see that its children are so situated as to enable them to become self-supporting and respectable citizens. This is, of course, primarily the duty and responsibility of parents, but if these are unable or unwilling to discharge this duty, and it is constantly neglected, society will suffer, and that very seriously, if the State does not stand in *loco parentis* and do its duty both to the child and to society, by seeing that he is properly brought up. The founders of your State recognized this duty, and New England still reaps the benefit of the sound principles established by the Pilgrim Fathers. The duty of educating young delinquents, not punishing them, was recognized in Philadelphia, New York and other places, and carried into practical effect long before the principle was accepted in the mother country.¹ But, *the circumstances of the country considered*, better principles than those which were at first adopted in these early reformatories have now been introduced into Europe, and are generally adopted in the Old World.

In all cases, it appears to me, and this is the view now generally adopted in Great Britain, that up to the age of fourteen the child who has not such a home as will prepare him to take his proper place in society, and is deprived, whether by the course of nature or by human laws, of parental control, should be placed by the State, representing society, in a condition as nearly as possible representing *a good home*. Hence, in all cases, I object to large institutions for children, where individuality is destroyed, and where there cannot be any home influence. The family system should be represented as completely as circumstances will permit, the parental control and authority being delegated by the State to the managers of the institution, and the loving spirit of a family being infused by the resident officials and by voluntary benevolent effort. The surroundings of the young persons thus brought into an artificial at-

¹ [In her testimony before the Select Committee on Criminal and Destitute Juveniles, 1852, Miss Carpenter commended the organization and work of the houses of refuge in New York and Philadelphia as greatly superior to the English institutions.—EDITOR.]

mosphere should correspond with their natural mode of life, as far as is compatible with sanitary conditions, order and propriety; while the educational and industrial learning should be such as to prepare them to discharge well the duties of the condition of life which they may be expected to fill.

Such will be generally found to be the accepted ideas in the development of English protestant reformatories and industrial schools. The older reformatory schools in New York and Philadelphia were established on the congregate system. That at Westboro', in Massachusetts, was established later, but the family system was never fully adopted in it, and the various serious catastrophes which have befallen it indicate an entire want of the family spirit. From all I heard it was rather a juvenile gaol. Shortly before my arrival about eighty boys had absconded. I was not invited to visit the place, and did not believe that I should gain much by going there. I carefully visited the New York Reform School, on Randall's Island, and the pauper schools on the same island. The former is a splendid institution, and managed with great care and effort; but it is carried on, it appears to me, on a false principle. There is no natural life or freedom; young men of an age to have very large experience of vice are associated with young boys; all arrangements are artificial; instead of the cultivation of the land, which would prepare the youth to seek a sphere far from the danger of large cities, the boys and young men were being taught trades, which would confine them to the great centres of an overcrowded population. The girls were being carefully taught, and even too much attention was paid to their personal comfort; *but they were prisoners; they were not being prepared for a home life, which is the best life of the woman, and could not be so under existing circumstances*, which were perfectly artificial, and, as it appeared to me, calculated to engender vanity and self-consideration. The same tendencies were more strikingly developed at the Lancaster Girls' Reformatory.

In Philadelphia the same remarks must be applied to the large, prison-like buildings both for boys and for girls. Hundreds of youths were there congregated under lock and key, and, however good were the arrangements, they entirely failed to convince me that the principle was good on which the institutions were founded.

The State Reform School of Connecticut, at West Meriden, formed an admirable exception, and was worthy of all praise. It was a farm school and succeeded admirably. Unhappily, Dr. Hatch, its excellent superintendent, whose spirit called it into existence, is now no more . . . [pp. 68-69].

I am well aware that in many other States there are admirable institutions for the neglected and destitute, as well as criminal juveniles, conducted on principles similar to those which are accepted in Europe—true homes and farm schools. . . . Looking at the diversity which exists in your several States, and their independence of each other, I shall confine myself to a very general statement, which appears to me to be the basis of the treatment for all children who are without proper parental control, and of whom the State must therefore assume the guardianship.

1. The State should assume the control of all young persons *under the age of fourteen*, who are without proper guardianship. All may be classed together under this age, for there is no distinction between pauper, vagrant and criminal children, which would require a different system of treatment. Individual cases may, of course, arise, which must be dealt with specially.

2. The State may delegate the guardianship of all such children either to individuals who undertake to adopt them into a family, or to corporate bodies selected by the citizens, who undertake the charge of these young persons in home institutions, to be termed State industrial schools. The State, while delegating parental authority to such persons or corporate bodies, will lay down the conditions which are to be fulfilled by them, and will exercise regular inspections, to ascertain that the conditions are complied with, and make such allowance for each child as is agreed upon as necessary.

3. All State industrial schools must develop, as far as possible, the conditions of a home. They must be in the country, and must be entirely unconnected with the institutions for the relief of pauperism and vice, adult reformatories or prisons. They should be adapted to prepare the inmates to be respectable, self-supporting citizens; different departments being arranged for infants, boys and girls. It will always be better to have a number of small institutions, for about fifty inmates each, in different localities, each county support-

ing one, whether of boys or girls, or of infants; more voluntary effort and individual interest will thus be called forth. In that case, one industrial school board, chosen by the people, would have the general direction, while each school would have its own managing committee [pp. 69-70].

4. Ladies as well as gentlemen should always be on the board, as well as on the managing committees.

Young persons above the age of fourteen are generally found in England (and this will probably be still more the case in the United States), to have passed the age of childhood; and the association of these with the inmates of industrial schools is productive of the greatest evil. . . . For these, special juvenile prisons or reformatory gaols should be established, and reformatory treatment should be developed, based on the principles of the Crofton system. Separate institutions may be established for young persons between fourteen and sixteen, similar to the industrial schools, when a sufficient number of such are found. These juvenile reformatory prisons should in all cases be provided with separate sleeping cells, and have a preparatory stage of not less than a month in solitude. . . .

These reformatory juvenile prisons should also be under the management of a board chosen by the citizens, under the direction of the State [p. 71].

What is called in England the boarding-out system, placing children in families instead of workhouses, and keeping them under the surveillance of visiting ladies, is doubtless very valuable where the conditions needed for success are complied with, but it is quite impossible that this can be done universally. My experience of twenty years in visiting the families of working people in a large city, and the reports we are continually hearing of the neglect or even starvation of helpless children boarded out with women, fully satisfy me that a well managed institution is far better, to prepare these children to go out into families as young servants, when sufficiently trained. The inquiries which I made in Canada made me very doubtful of the benefit of taking children over to Canada to place in families, even though every possible precaution is taken by the ladies who conduct the movement; the report of the agent sent over to investigate the actual condition of such children confirms these

doubts. A real home cannot be artificially created, and rarely can supply the cravings of the child's heart. . . . In the recent annual report of the Charities' Aid Association (*vide New York Times*, March 3, 1875), it is stated respecting the pauper children of New York: "The number of children remaining in county poor-houses in 1874 was 625" (a very small number, indicating that in country districts most had been absorbed into families), "in city almshouses, and principally in those of New York City and Brooklyn, 1,735." But the greater number of these unfortunate children were placed where the seeds of vice must almost certainly be implanted in their young minds. The report continues: "About 1,300 children on Randall's Island are now brought in daily contact with convict women, sentenced to short terms of imprisonment for intoxication, debauchery and other offences." I visited the pauper establishment on Randall's Island. The site afforded every facility for developing an admirable institution where agricultural labor and the salutary influences of nature might have been given to the inmates. But nothing of the kind was done, and seldom have I witnessed a more soul-sickening spectacle than degraded women and incapable men having the charge of these children. The mere sight of them must have had a demoralizing effect on the children, and though the intellectual instruction was fair, yet there was a painfully depressed and spiritless look among them. . . . The Juvenile Asylum, a few miles distant from New York, presented a very different aspect. Neglected and destitute children here find a true home, and are watched over by voluntary benevolent care. The children found by the police are first conducted, by the desire of the magistrates, to a house in the city where their position is ascertained, and they are prepared to go with greater advantage to the country home, whence once a fortnight a detachment is sent, under escort of an official, into homes in the West, where they are visited from time to time. The time of residence in the Juvenile Asylum varies from one month to five years, according to the condition of the child. The system appears most successful and admirably conducted.

Even a worse fate than that of the children on Randall's Island attends the destitute and homeless children of Philadelphia. In that city is a gigantic poor-house, covering a large extent of ground, and

with several groups of buildings. The superintendence appeared good and humane, and gentlemen of position and humanity directed the management, which appeared to be as good as under existing circumstances it could be. But within these walls were congregated vast numbers, not only of old and infirm persons of both sexes, who, in their separate wards were well cared for, but numbers of able-bodied criminals, as well as multitudes of lunatics; the former sent here to be maintained at the public expense in daring idleness, because the city prison was already too densely crowded . . . [pp. 72-74].

It is generally supposed in England that a good education is imparted to every child in the United States. We know that this is not the case in our own country, and we are sometimes inclined to envy the German and Swiss towns, where no untaught children are to be seen in the streets. I had long been aware of the fallacy of such an idea, from statistics which had reached me many years ago from Boston, Massachusetts, and from the reports of that truly admirable institution, the "Children's Aid Society," of New York. I was not, however, prepared to learn that in Philadelphia, at the time of my visit, at least 25,000 were known not to be in any regular course of instruction, and to observe in recent statistical returns that there were more than 60,000 children not attending school in New York. Such figures speak volumes. No State agency as yet exists to grapple with this gigantic evil; and the voluntary effort which is doing its utmost to cope with it, is not utilized by the State as it should be, and is allowed to languish for want of means . . . [p. 75].

There must be a certain amount of compulsion exercised over all those children who do not attend school voluntarily; and if they are in so neglected a condition that they are unable to attend the common schools, then they should be placed in "day industrial schools," where they might still remain under parental care, but where they would be detained the whole day, being taught some industrial work, and receiving such amount of plain food as might be found needful. But in such cases, and in all where it can be shown that there is culpable negligence in the parent, a power must exist in the state to lay the cost of maintenance on the parent, from his earnings. Such a provision is in England found indispensable, to prevent a

serious abuse of these schools, and to check parental neglect. . . . *The condition of these tens of thousands of children calls for very special consideration.* They are too wild and neglected in physical condition to attend the common schools. It would be *most injurious* to separate them all from their parents; the line of demarcation between the "children of the State" and those under parental guardianship ought never lightly to be removed. Let them be placed, without the hand of a policeman, but by a school-board order, in a "day industrial school," where, during the day, they will be under careful guardianship and prepared for their future life work . . . [p. 76].

12. California's School for Juvenile Delinquents

"AN ACT TO ESTABLISH A STATE REFORM SCHOOL FOR JUVENILE OFFENDERS, AND TO MAKE APPROPRIATION THEREFOR"

STATUTES OF CALIFORNIA, 1889, CHAP. 108

SECTION 1. There shall be established and maintained in this State, and located in the County of Los Angeles, an institution to be known as the "Reform School for Juvenile Offenders," for the confinement, discipline, education, employment, and reformation of juvenile offenders in the State of California.

SEC. 2. The general supervision and government of said institution shall be vested in a Board of Trustees consisting of three citizens of the State of California, who shall be appointed by the Governor with the advice and consent of the Senate. [Provides for overlapping terms of 4 years. Governor to fill any vacancy.]

SEC. 3. The Trustees of such institution shall be a body corporate and politic for certain purposes, namely: To receive, hold, use, and convey or disburse moneys or other property, real and personal, in the name of said corporation but in trust and for the use and by the authority of the State of California, and to control, manage, and direct the several trusts committed to them respectively, including the organization, government, and discipline of all officers, employes, and other inmates of said institution, with power to make contracts, to sue and be sued, plead and be impleaded, to have and to use a common seal, and to alter the same at pleasure, and to exercise all the powers usually belonging to said corporations and necessary

for the successful discharge of the obligations devolved by law upon said members of trust; *provided*, that they shall not have power to bind the State by any contract or obligation beyond the amount of appropriations which may at the time have been made for the purposes expressed in the contract or obligation, nor to sell or convey any part of the real estate belonging to such institution without the consent of the Legislature, except that they may release any mortgage, or convey any real estate which may be held by them as security for any money or upon any trust, the terms of which authorizes such conveyance; *and provided further*, that the Legislature shall have power at any time to amend, alter, revoke, or annul the grant of corporate powers herein contained.

SEC. 4. [Provides for the selection of a site for the school.]

SEC. 5. The said Board of Trustees shall prepare and adopt plans for the grounds, buildings, and fixtures necessary and proper for such an institution, not in their judgment to exceed in cost the amount of money hereinafter appropriated, but if practicable of such description that other buildings can be added to or enlarged without injury to their symmetry or usefulness; and may let or make all necessary contracts, with the approval of the Governor, for the construction of such buildings and fixtures and the improvement of the grounds according to such plans. Said Board of Trustees shall use all practicable diligence in the commencement and completion of said buildings and fixtures, and the improvement of the grounds, according to such plans.

SEC. 6. No Trustee or employé of such institution shall be personally, directly or indirectly, interested in any contract, purchase, or sale made, or any business carried on in behalf of or for said institution. [All contracts, purchases, or sales made in violation of this section shall be null and void; payments to be recovered by civil suit and Trustee violating this provision to be removed by the Governor.]

SEC. 7. The Board shall make all needful rules and regulations concerning their meetings and the modes of transacting their business, shall take charge of said institution to see that its affairs are properly conducted, that strict discipline is maintained, and that suitable employment and education are provided for its inmates.

They are authorized to make contracts for the purchase of furniture, apparatus, tools, stock, provisions, and everything necessary to equip the institution for the purposes herein specified, and to maintain and operate the same; *provided*, said Board shall incur no expense nor contract any debt beyond appropriations made or donations given for the said Reform School; and then only in such manner as may be prescribed by the Act of appropriation or the instrument of donation.

SEC. 8. The Board shall annually elect from their own number a Chairman and a Vice-Chairman whose term of office shall be for one year, and until their successors shall be duly appointed and qualified. They shall also elect a Treasurer, not one of their own number, whose term of office shall be for two years, and until his successor shall be duly elected and qualified, who shall be at all times subject to removal by the Board for good cause.

SEC. 9. The Board shall appoint a Superintendent of said Reform School, not of their own number, whose salary shall be fixed by said Board not to exceed three thousand six hundred dollars per annum, and shall also appoint such other officers and such assistants as the wants of the institution may from time to time require, and shall prescribe their duties and fix their salaries as may be reasonable.

SEC. 10. Said Board of Trustees shall, on or before the first day of December every two years, make to the Governor a full and detailed report of their doings as such Trustees, and of the expense of said institution, with such other information relating thereto as they may think interesting or useful to the State; which report shall be communicated by the Governor to the next succeeding session of the State Legislature. Said Trustees shall receive no salary for their services as such from the State, but shall be allowed all necessary expenses incurred in the discharge of their duties.

SEC. 11. The Board of Trustees shall have a regular meeting once every three months, at such time and place as they may direct; special meetings may be called by the President of said Board in all cases where it becomes necessary for such a meeting.

SEC. 12. The Superintendent before entering upon the duties of his office shall take an oath faithfully to discharge the same and

execute a bond with sureties to be approved by the Board, in a sum to be fixed by the Board, conditioned for the faithful performance of all his duties as such Superintendent. He shall be a resident at the institution, and shall be ex officio the Secretary of the Board, taking charge of all books and papers. He shall have charge of the land, buildings, furniture, apparatus, tools, stock, provisions, and every other species of property belonging to the institution, subject to the direction and control of said Board, and shall account to the Board in such manner as they may require for all property intrusted to him, and all moneys received by him from whatever source shall be deposited with the Treasurer. His books shall at all times be open to the inspection of the Board, who shall at least once in every three months carefully examine the same and all accounts, vouchers, documents connected therewith, and make a report of the result of such examination in a book provided for the purpose. He shall have charge of the inmates of said institution; he shall discipline, govern, instruct, employ, and use his best efforts to reform the children and youth under his care, and shall at all times be subject to removal by the Board for incapacity, cruelty, negligence, immorality, or any other good cause.

SEC. 13. [Provides for oath by the Treasurer, execution of bond and payment of the funds of the institution on written order of the Superintendent. Salary \$600 a year.]

SEC. 14. Said Board of Trustees shall arrange the building or buildings to be used for said Reform School and the grounds about the same, so that a portion thereof may be used for the proper confinement, care, and education of the male inmates, and the remaining portion for the proper confinement, care, and education of the female inmates, and to the absolute exclusion of all communication of any kind or character between the sexes.

SEC. 15. Whenever said institution shall have been so far completed as to properly admit of the reception of inmates therein, the Governor shall make due proclamation of that fact; and thereafter it shall be lawful for said Board of Trustees to receive into its care and guardianship infants between the ages of ten and eighteen years committed to its custody, as hereinafter provided.

SEC. 16. Whenever any boy or girl between the ages of ten and

sixteen years is convicted before any Court of competent jurisdiction of any crime which committed by an adult would be punishable by imprisonment in the county jail or penitentiary, such juvenile offender shall be committed by the order of said Court to said State Reform School for a term of not less than one nor more than five years; *provided*, that when the crime for which such conviction is had is punishable by imprisonment in the county jail, the Court may, in the exercise of its discretion, commit said offender to the county jail for the time authorized by law for the punishment of the offense for which the offender is convicted; *and provided further*, that nothing in this Act shall be construed to debar any Court from punishing any capital offense, or attempt to commit a capital offense, in such manner as is or may be provided by law.

SEC. 17. If any accusation of the commission of any crime shall be made against any infant under the age of sixteen years before any Grand Jury, and the charge appears to be supported by evidence sufficient to put the accused upon trial, the Grand Jury may, in their discretion, instead of finding an indictment against the accused, return to the Court that it appears to them that the accused is a suitable person to be committed to the care and guardianship of said institution; the Court may thereupon order such commitment, if satisfied from the evidence that such commitment ought to be made, which examination may be waived by the parent or guardian of such infant.

SEC. 18. If any infant between the ages of ten and sixteen years shall be arraigned for trial in any Court having competent jurisdiction on a charge of any violation of any criminal law of this State, except for the commission of a capital offense, or an attempt to commit a capital offense, the Judge may, in his discretion, with the consent of the accused, arrest at any stage of the cause any further proceedings on the part of the prosecution, and commit the accused to the care and guardianship of this institution.

SEC. 19. All infants between the ages of ten and sixteen years who may be accused of any offense punishable by imprisonment, shall, with a view to the question whether they ought to be committed to said institution, be entitled to a private examination and trial before a Court having competent jurisdiction, to which only

the parties to the case and the parent or guardian of the accused, and their attorneys shall be admitted, unless one of the parents, the guardian, or other legal representative of the infant demand a public trial; in such case the proceedings shall be in the usual manner.

SEC. 20. It shall also be lawful for said Board of Trustees, under such rules as they may prescribe, to receive into the care and guardianship of this institution, whenever it may be convenient so to do, of infants between the ages of ten and eighteen years committed to its custody in any of the following modes:

First—Infants committed by any Judge of a Superior Court of this State on the complaint, in writing, filed, and due proof thereof by the parent or guardian of such infant, that by reason of the incorrigible and vicious conduct such infant has rendered his control beyond the power of such parent or guardian, and made it requisite that from a regard for the future welfare of such infant and for the protection of society that he be placed in such guardianship.

Second—Infants committed by any Judge of the Superior Court of this State where complaint in writing has been filed and due proof of the same has been made that such infant is a proper subject for the care and guardianship of such institution, in consequence of vagrancy, or of incorrigible or vicious conduct, and from a moral depravity, or otherwise, the parent or guardian in whose custody he may be, such parent or guardian is incapable or unwilling to exercise the proper care or discipline over such infant.

Third—Infants committed by any Judge of the Superior Court of this State where complaint in writing has been filed and due proof of the same has been made by the mother or guardian, when the father is dead or has abandoned his family or is an habitual drunkard or does not provide for the support of such infant, that such infant is destitute of a home and of adequate means of obtaining an honest living, or is in danger of being brought up to lead an idle and immoral life, and where such mother or guardian is unable to provide the proper support and care for such infant.

SEC. 21. Before conveying infants to said institution, as provided under section twenty of this Act, the person or persons having charge of said infants shall ascertain from the Superintendent whether they

can be received; and if they cannot, then the cases of such infants shall be disposed of as if this Act had never been passed, and no proceedings taken under it.

SEC. 22. In all cases where the commitment is executed by the official person, whose proceedings are usually evidenced by the record, or where the occasion of the commitment is a criminal charge or conviction against the infant, no other record shall be made (unless demanded by the infant, his parent, or guardian) than that, in substance, such infant (naming him), who on a day therein named was of the age of — years, having been brought before said Court, or officer, and it having been ascertained by the testimony of the witnesses that such infant was a suitable person to be committed to the instruction and discipline of such institution, and in case of conviction for crime (naming the offense), therefore such infant was ordered to be committed to said institution.

SEC. 23. Every person committed to the Reform School shall by good behavior earn to himself, or herself, and be credited with time as follows, to wit: Each month in the first year, five days; each month in the second year, six days; each month in the third year, seven days; each month in the fourth year, eight days; each month in the fifth year, ten days. When such person shall be degraded for misconduct, or violation of the rules of the institution, then for every time so degraded such person shall lose five days of the good time that may stand placed to his credit; and the Superintendent shall release every such person from the institution as many days before the expiration of the term of his sentence as such person shall have balance of good days to his credit. Upon the discharge of any person committed to the Reform School, except when committed under section twenty of this Act, the Superintendent shall provide him with suitable clothing and five dollars in money, and procure transportation for him to his home, if resident in this State, or to the county in which he may have been convicted, at his option.

SEC. 24. Said Board of Trustees shall, with the approval of the Governor, estimate and determine as near as may be the actual expense per month of keeping and taking care of each infant committed to said institution, under the provisions of section twenty of this Act, not including the use of the grounds and buildings, and

shall include a statement of such estimated price in each biennial report to the Governor. When any infant is committed to said institution at the instance of his or her parent or guardian, or other protector, the cost of keeping said infant, including the cost of transporting to and from the institution, shall be wholly paid by such parent or guardian, unless by reason of the poverty of such parent or guardian or other good cause, said Board of Trustees shall otherwise order and direct; in each case such expenses, including the cost of transportation, shall be borne one half by the county from which such infant is committed, and the remaining one half shall be borne by the State. The expense which any county may be liable to pay on account of any infant committed to said institution under the provisions of this Act, shall be paid by the Board of Supervisors into the State Treasury on a certified and detailed statement as to the amount due therefor from such county being furnished to the Auditor of the county by said Superintendent; but in no case shall the amount charged to any county for the keeping of any infant exceed one half of the estimated cost to the State of his or her support, exclusive of the use of the permanent property of the institution. All moneys paid by such counties under the provisions of this section into the State Treasury shall be paid directly by the State Treasurer to the Superintendent of the Reform School for the use of said institution, as herein provided: *provided, however*, that no order shall be made by said Board of Trustees charging any county with one half of the cost of keeping in the institution any infant committed at the instance of his or her parent or guardian, or other protector, unless a certificate in writing is first produced signed by the President of the Board of Supervisors of such county, setting forth that the case is one in which the expense should be charged to the State and county, and also setting forth the reasons for their being so charged.

SEC. 25. [Provides for estimate of expense on proclamation that school is ready to receive inmates.]

SEC. 26. [Provides punishment for any person assisting any inmate in escaping from the school.]

SEC. 27. [Parent, guardian, or master believing commitment unjust may apply to Board of Trustees for a hearing. Board may

grant or refuse release. If refused, appeal may be made to the Superior Court.]

SEC. 28. [Provides for execution by the sheriff of writs of commitment issued by superior judge and for sheriff's fees.]

SEC. 29. [Provides for sale of property inherited by an infant at the time of or subsequent to his commitment to meet the school costs.]

SEC. 30. [Appropriates \$200,000 for erection, equipment, and maintenance for two-year period and examination and auditing of accounts.]

SEC. 31. This act shall take effect and be in force from and after its passage.

13. The California Supreme Court on Procedure in Commitments

EX PARTE BECKNELL

119 California 496 (1897)

BEATTY, C. J.—By section 13 of the act of March 23, 1893, relating to the Whittier State School (*Stats. 1893*, p. 332), section 17 of the original act was amended so as to read as follows:

If any accusation of the commission of any crime shall be made against any minor, under the age of eighteen years, before any grand jury, and the charge appears to be supported by evidence sufficient to put the accused upon trial, the grand jury may, in their discretion, instead of finding an indictment against the accused, return to the superior court that it appears to them that the accused is a suitable person to be committed to the care and guardianship of said institution. The court may thereupon order such commitment, if satisfied from the evidence that such commitment ought to be made, which examination may be waived by the parent or guardian of such minor.

Acting under this provision of the statute the grand jury of Merced county made a presentment to the superior court as follows:

To the judge of the superior court of the county of Merced, state of California: An accusation against Jonie Becknell, a minor under the age of eighteen years, to-wit, of the age of thirteen years, charging the said Jonie Becknell with the crime of burglary, committed in Merced county, state of California, on or about the first day of August, 1897, and the charge appearing to the grand jury to be supported by evidence sufficient to put the said Jonie Becknell upon his trial therefor, and it appearing to said grand jury that the accused is a suitable person to be committed to the care and guardianship of the reform school for juvenile offenders at Whittier, the grand jury therefore recommend that said Jonie Becknell be committed to the care and guardianship of said institution.

Thereupon the court directed the said Jonie Becknell to be brought into court, and, against his special protest and objection, on the ground that the court had no jurisdiction to act in the matter, proceeded to take testimony for the purpose of determining whether said Jonie Becknell was a suitable person to be committed to the Whittier State School.

Upon the testimony so taken, and without any other proceeding or any trial by jury, the court did adjudge the said Jonie Becknell to be a suitable person to be committed to the Whittier State School until he should reach his majority, and made an order accordingly, under which he is now held in the custody of the superintendent of the school. The boy is under fourteen years of age, his father and mother are residents of Merced county and are able and willing to provide for his support and education.

Upon this state of facts appearing on the return to the writ of *habeas corpus*, issued upon petition of the boy's father, we are asked to discharge him from custody.

The petition must be granted. As a judgment of imprisonment the order of the superior court is void. The boy cannot be imprisoned as a criminal without a trial by jury. As an award of guardianship it is equally void, for his parents—his natural guardians—cannot be deprived of their right to his care, custody, society, and services except by a proceeding to which they are made parties, and in which it is shown that they are unfit or unwilling or unable to perform their parental duties.

All the cases cited by counsel are consistent with, and several of them sustain, these views.

The minor is discharged from the custody of the superintendent and restored to the custody of the petitioner.

VAN FLEET, J., TEMPLE, J., MCFARLAND, J., and HENSHAW, J., concurred.

14. The Whittier State School Law Improved by Amendment

STATUTES OF CALIFORNIA, 1921, CHAP. 547¹

SECTION 1. The title of an act entitled "An act to establish a school for the discipline, education, employment, reformation and

¹ [Title of Act giving sections amended and new sections added has been omitted.
—EDITOR.]

protection of juvenile delinquents in the State of California to be known as 'The Whittier State School,' " approved March 11, 1889, as amended, is hereby amended to read as follows:

An act to establish in the State of California an educational institution for the care, supervision, education, training, discipline and employment of boys, to be known as the "Whittier State School."

SEC. 2. Section one of the act entitled "An act to establish a school for the discipline, education, employment, reformation and protection of juvenile delinquents, in the State of California, to be known as 'The Whittier State School,' " approved March 11, 1889 as amended is hereby amended to read as follows:

§ 1. There shall be established and maintained in this state a junior state school, an educational institution for boys who are in need of the education, training, care, supervision and moral development therein provided. Said institution shall be known as the "Whittier State School." This act shall be known as the "Whittier State School Act." The said school is hereby declared to be a corporation.

SEC. 3. Section eight of said act is hereby amended to read as follows:

§ 8. The Board shall annually elect from their own number a president and a vice-president, whose term of office shall be for one year, and until their successors shall be duly appointed and qualified.

SEC. 4. Section nine of said act is hereby amended to read as follows:

§ 9. The board shall establish rules and regulations governing admissions to said school. They shall appoint a superintendent of said school, not of their own number, who shall be of high moral character specially qualified for the position. They shall fix his tenure and compensation. The superintendent, except as herein otherwise provided, shall appoint and prescribe the duties of such officers and employees as the wants of the institution may, from time to time, require. The remuneration and tenure of all officers or employees of the school shall be fixed by the superintendent in accordance with law. All officers and employees of said school shall have the general powers and privileges of peace officers.

Sec. 5. Section eleven of said act is hereby amended to read as follows:

§ 11. The board of trustees shall have a regular meeting once every three months at such time and place as they may direct; special meetings may be called by the president of said board or by any two members or by the superintendent of said school.

Sec. 6. Section twelve of said act is hereby amended to read as follows:

§ 12. The superintendent before entering upon the duties of his office shall take an oath faithfully to discharge the same and execute a bond with sureties and in a sum to be approved by the board conditioned on the faithful performance of all his duties as such superintendent. He shall be the executive and administrative officer with full jurisdiction over said institution. The board of trustees in their control, management, and direction of the institution shall act through the superintendent but all his acts shall be subject to the approval of said board. He shall ex officio be the secretary of the board, taking charge of all books and papers. He shall have charge of the land, buildings, furniture, apparatus, tools, stock, provisions, and every other species of property belonging to the institution. He shall account to the board in such manner as they may require for all property entrusted to him, and all moneys received by him from whatever sources shall be deposited with the treasurer. His books shall at all times be open to the inspection of the board. He shall have charge of the boys committed to said school, and shall provide for their care, supervision, education, training, discipline, employment and government and use his best efforts toward the development of their character and the promotion of their welfare. The superintendent shall organize and maintain such departments as he may deem wise or necessary in the conduct of the school, including a department of instruction, the director of which shall be well trained in modern school administration and shall rank as an assistant superintendent. Said department shall have jurisdiction over all courses of instruction which shall include industrial training. Such courses to be subject to the approval of the state superintendent of public instruction.

If there is created a department of the government of the State

of California known as the department of institutions, the said department shall succeed to all the duties, powers, purposes, responsibilities and jurisdiction of the board of trustees of the Whittier State School and the several officers, deputies and employees of the same.

SEC. 7. Section fifteen of said act is hereby amended to read as follows:

§ 15. It shall be lawful for said board of trustees to receive into said school boys over the age of eight years; provided, however, that in all such cases there shall be paid monthly to the state treasurer for each boy committed by the court to said school or to any other state school from which he may have been transferred to said school, the sum of twenty dollars by the county from which such boy is committed, for and during each month or part of month such person so committed remains in such state school, or in any other state school within this state to which he may be transferred.

SEC. 8. Section 16 of said act is hereby amended to read as follows:

§ 16. [Provides conditions under which the school may receive bequests or gifts of money or property.]

SEC. 9. Section eighteen of said act is hereby amended to read as follows:

§ 18. Under rules and regulations approved by the superintendent and which shall include adequate provision for supervision, education and employment, boys may be permitted to leave the school and with the approval of the board any boy may be honorably dismissed or discharged by the superintendent. All boys honorably dismissed and all those who have attained the age of twenty-one years shall thereafter be released from all the penalties and disabilities resulting from any offenses for which he may have been committed. Upon the final dismissal or discharge of any boy as in this section provided, the superintendent shall immediately certify such discharge in writing and shall transmit the certificate to the court by which such boy was committed. Such court, thereupon, shall dismiss the accusation and the action pending against the boy.

SEC. 10. Section twenty-three of said act is hereby amended to read as follows:

§ 23. Upon the discharge or dismissal of, or the granting of leave of absence to any boy committed to said school, the superintendent may procure for him transportation, and provide him with suitable clothing, and with such an amount of money as the board of trustees may authorize under rules and regulations approved by the said board.

SEC. 11. Sections thirteen, fourteen, sixteen, sixteen *a*, sixteen *b*, sixteen *c*, seventeen, nineteen, twenty-one, twenty-two, twenty-five and twenty-seven of said act are hereby repealed.

SEC. 12. A new section is hereby added to said act to be numbered seven *a*, and to read as follows:

§ 7*a*. Said school may manufacture or raise for sale, such supplies or produce or articles of furniture as may be used in the said school or any other state institution, but the purpose of all instruction, discipline and industries shall be for the benefit of such boys and to better fit them for good citizenship rather than make said institution self sustaining. The moneys received as provided for in this section shall be paid to the state treasurer, to be placed in the contingent fund to the credit of said school and for its use.

SEC. 13. A new section is hereby added to said act to be numbered section twenty *a*, and to read as follows:

§ 20*a*. The provisions of section twenty of this act shall not be construed to authorize the superintendent of said school to return to the court as feeble-minded any boy except where such feeble-mindedness has been established through investigation by the California bureau of juvenile research or some qualified person approved by said bureau.

SEC. 14. A new section is hereby added to the said act to be numbered section thirty-two and to read as follows:

§ 32. The Whittier State School may admit boys over eight years of age who are wards of the juvenile court under any of the subdivisions of section one of the juvenile court law as approved June 5, 1915, as amended. In any such case, instead of committing any such boy to the Whittier State School, the judge of the juvenile court may place such boy on probation in the care of said school, and for such time, as may be agreed upon by said judge and said

school. Each boy so admitted shall be subject to the rules and regulations of said school.

Any such boy who absents himself from said school without proper permission first obtained from said school shall have violated his probation, and upon a repetition of such absence shall be deemed an habitual truant within the meaning of subdivision ten of section one of said juvenile court law.

The provision of section eleven of the juvenile court law approved June 5, 1915, as amended, providing for payments by the county to the state, and for payments to the county by the parent, parents, guardian or person liable for the custody of any such boy who has been a ward of the juvenile court under any of the provisions of section one of said juvenile court law, shall apply in the case of each such boys admitted to Whittier State School the same as if he had been committed to the Whittier State School by the juvenile court. The judge placing such boy on probation to said school shall issue such orders as may be necessary to authorize and require such payments being made.

SEC. 15. A new section is hereby added to said act to be numbered section thirty-three and to read as follows:

§ 33. The invalidity of any part of this act shall not be construed to affect the validity of any other part capable of having practical operation and effect without the invalid part.

THE JUVENILE COURT MOVEMENT

15. The First Juvenile Court Act

"AN ACT TO REGULATE THE TREATMENT AND CONTROL OF DEPENDENT
NEGLECTED AND DELINQUENT CHILDREN," LAWS OF
ILLINOIS, 1899

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly: Definitions.*—This act shall apply only to children under the age of 16 years not now or hereafter inmates of a State institution, or any training school for boys or industrial school for girls or some institution incorporated under the laws of this State, except as provided in sections twelve (12) and eighteen (18). For the purposes of this act the words dependent

child and neglected child shall mean any child who for any reason is destitute or homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill fame or with any vicious or disreputable person; or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such a child; and any child under the age of 8 years who is found peddling or selling any article or singing or playing any musical instrument upon the streets or giving any public entertainment. The words delinquent child shall include any child under the age of 16 years who violates any law of this State or any city or village ordinance. The word child or children may mean one or more children, and the word parent or parents may be held to mean one or both parents, when consistent with the intent of this act. The word association shall include any corporation which includes in its purposes the care or disposition of children coming within the meaning of this act.

SEC. 2. *Jurisdiction*.—The circuit and county courts of the several counties in this State shall have original jurisdiction in all cases coming within the terms of this act. In all trials under this act any person interested therein may demand a jury of six, or the judge of his own motion may order a jury of the same number, to try the case.

SEC. 3. *Juvenile court*.—In counties having over 500,000 population the judges of the circuit court shall, at such times as they shall determine, designate one or more of their number whose duty it shall be to hear all cases coming under this act. A special court room, to be designated as the juvenile court room, shall be provided for the hearing of such cases, and the findings of the court shall be entered in a book or books to be kept for that purpose and known as the "Juvenile Record," and the court may, for convenience, be called the "Juvenile Court."

SEC. 4. *Petition to the court*.—Any reputable person, being resident in the county, having knowledge of a child in his county who appears to be either neglected, dependent or delinquent, may file with the clerk of a court having jurisdiction in the matter a petition in writ-

ing, setting forth the facts, verified by affidavit. It shall be sufficient that the affidavit is upon information and belief.

SEC. 5. *Summons.*—Upon the filing of the petition a summons shall issue requiring the person having custody or control of the child, or with whom the child may be, to appear with the child at a place and time stated in the summons, which time shall be not less than 24 hours after service. The parents of the child, if living, and their residence is [if] known, or its legal guardian, if one there be, or if there is neither parent nor guardian, or if his or her residence is not known, then some relative, if there be one and his residence is known, shall be notified of the proceedings, and in any case the judge may appoint some suitable person to act in behalf of the child. If the person summoned as herein provided shall fail, without reasonable cause, to appear and abide the order of the court, or to bring the child, he may be proceeded against as in case of contempt of court. In case the summons can not be served or the party served fails to obey the same, and in any case when it shall be made to appear to the court that such summons will be ineffectual, a warrant may issue on the order of the court, either against the parent or guardian or the person having custody of the child or with whom the child may be, or against the child itself. On the return of the summons or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Pending the final disposition of any case the child may be retained in the possession of the person having the charge of same, or may be kept in some suitable place provided by the city or county authorities.

SEC. 6. *Probation officers.*—The court shall have authority to appoint or designate one or more discreet persons of good character to serve as probation officers during the pleasure of the court; said probation officers to receive no compensation from the public treasury. In case a probation officer shall be appointed by any court, it shall be the duty of the clerk of the court, if practicable, to notify the said probation officer in advance when any child is to be brought before the said court; it shall be the duty of the said probation officer to make such investigation as may be required by the court; to be present in court in order to represent the interests of the child when

the case is heard; to furnish to the court such information and assistance as the judge may require; and to take such charge of any child before and after trial as may be directed by the court.

SEC. 7. *Dependent and neglected children.*—When any child under the age of sixteen (16) years shall be found to be dependent or neglected within the meaning of this act, the court may make an order committing the child to the care of some suitable State institution, or to the care of some reputable citizen of good moral character, or to the care of some training school or an industrial school, as provided by law, or to the care of some association willing to receive it embracing in its objects the purpose of caring or obtaining homes for dependent or neglected children, which association shall have been accredited as hereinafter provided.

SEC. 8. *Guardianship.*—In any case where the court shall award a child to the care of any association or individual in accordance with the provisions of this act the child shall, unless otherwise ordered, become a ward and be subject to the guardianship of the association or individual to whose care it is committed. Such association or individual shall have authority to place such child in a family home, with or without indenture, and may be made party to any proceeding for the legal adoption of the child, and may by its or his attorney or agent appear in any court where such proceedings are pending and assent to such adoption. And such assent shall be sufficient to authorize the court to enter the proper order or decree of adoption. Such guardianship shall not include the guardianship of any estate of the child.

SEC. 9. *Disposition of delinquent children.*—In the case of a delinquent child the court may continue the hearing from time to time, and may commit the child to the care and guardianship of a probation officer duly appointed by the court, and may allow said child to remain in its own home, subject to the visitation of the probation officer; such child to report to the probation officer as often as may be required and subject to be returned to the court for further proceedings, whenever such action may appear to be necessary; or the court may commit the child to the care and guardianship of the probation officer, to be placed in a suitable family home, subject to the friendly supervision of such probation officer; or it

may authorize the said probation officer to board out the said child in some suitable family home, in case provision is made by voluntary contribution or otherwise for the payment of the board of such child, until a suitable provision may be made for the child in a home without such payment; or the court may commit the child, if a boy, to a training school for boys, or if a girl, to an industrial school for girls. Or, if the child is found guilty of any criminal offense, and the judge is of the opinion that the best interest requires it, the court may commit the child to any institution within said county incorporated under the laws of this State for the care of delinquent children, or provided by a city for the care of such offenders, or may commit the child, if a boy over the age of ten years, to the State reformatory, or if a girl over the age of ten years, to the State Home for Juvenile Female Offenders. In no case shall a child be committed beyond his or her minority. A child committed to such institution shall be subject to the control of the board of managers thereof, and the said board shall have power to parole such child on such conditions as it may prescribe, and the court shall, on the recommendation of the board, have power to discharge such child from custody whenever in the judgment of the court his or her reformation shall be complete; or the court may commit the child to the care and custody of some association that will receive it embracing in its objects the care of neglected and dependent children and that has been duly accredited as hereinafter provided.

SEC. 10. *Transfer from justices and police magistrates.*—When, in any county where a court is held as provided in section three of this act, a child under the age of 16 years is arrested with or without warrant, such child may, instead of being taken before a justice of the peace or police magistrate, be taken directly before such court; or if the child is taken before a justice of the peace or police magistrate, it shall be the duty of such justice of the peace or police magistrate to transfer the care [case] to such court, and the officer having the child in charge to take such child before that court, and in any such case the court may proceed to hear and dispose of the case in the same manner as if the child had been brought before the court upon petition as herein provided. In any case the court shall require notice to be given and investigation to be made as in other cases

under this act, and may adjourn the hearing from time to time for the purpose.

SEC. 11. *Children under twelve years not to be committed to jail.*—No court or magistrate shall commit a child under twelve (12) years of age to a jail or police station, but if such child is unable to give bail it may be committed to the care of the sheriff, police officer or probation officer, who shall keep such child in some suitable place provided by the city or county outside of the inclosure of any jail or police station. When any child shall be sentenced to confinement in any institution to which adult convicts are sentenced it shall be unlawful to confine such child in the same building with such adult convicts, or to confine such child in the same yard or inclosure with such adult convicts, or to bring such child into any yard or building in which such adult convicts may be present.

SEC. 12. *Agents of juvenile reformatories.*—It shall be the duty of the superintendent of the State Reformatory at Pontiac and the board of managers of the State Home for Juvenile Female Offenders at Geneva, and the board of managers of any other institution to which juvenile delinquents may be committed by the courts, to maintain an agent of such institution, whose duty it shall be to examine the homes of children paroled from such institution for the purpose of ascertaining and reporting to said court whether they are suitable homes; to assist children paroled or discharged from such institution in finding suitable employment, and to maintain a friendly supervision over paroled inmates during the continuance of their parole; such agents shall hold office subject to the pleasure of the board making the appointment, and shall receive such compensation as such board may determine out of any funds appropriated for such institution applicable thereto.

SEC. 13. *Supervision by state commissioners of public charities.*—All associations receiving children under this act shall be subject to the same visitation, inspection and supervision of the Board of State Commissioners of Public Charities as the public charitable institutions of this State. The judges of the courts hereinbefore mentioned may require such information and statistics from associations desiring to have children committed to their care under the provisions of this act as said judges deem necessary in order to enable them to

exercise a wise discretion in dealing with children. Every such association shall file with the Board of State Commissioners of Public Charities an annual printed or written report, which shall include a statement of the number of children cared for during the year, the number received, the number placed in homes, the number died, the number returned to friends; also a financial statement showing the receipts and disbursements of the associations. The statement of receipts shall indicate the amount received from public funds, the amount received from donations and the amount received from other sources, specifying the several sources. The statement of disbursements shall show the amount expended for salaries and other expenses, specifying the same, the amount expended for lands, buildings and investments. The secretary of the board of public charities shall furnish to the judge of each of the county courts a list of associations filing such annual reports, and no child shall be committed to the care of any association which shall not have filed a report for the fiscal year last preceding with the State Board of Commissioners of Public Charities.

SEC. 14. *Incorporation of associations.*—No association whose objects may embrace the caring for dependent, neglected or delinquent children shall hereafter be incorporated unless the proposed articles of incorporation shall first have been submitted to the examination of the Board of State Commissioners of Public Charities, and the Secretary of State shall not issue a certificate of incorporation unless there shall first be filed in his office the certificate of said Board of State Commissioners of Public Charities that said board has examined the said articles of incorporation and that, in its judgment, the incorporators are reputable and responsible persons, the proposed work is needed, and the incorporation of such association is desirable and for the public good; amendments proposed to the articles of incorporation or association having as an object the care and disposal of dependent, neglected or delinquent children shall be submitted in like manner to the Board of State Commissioners of Public Charities, and the Secretary of State shall not record such amendment or issue his certificate therefor unless there shall first be filed in his office the certificate of said Board of State Commissioners of Public Charities that they have examined the said amendment,

that the association in question is, in their judgment, performing in good faith the work undertaken by it, and that the said amendment is, in their judgment, a proper one and for the public good.

SEC. 15. *Surrender of dependent children—adoption.*—It shall be lawful for the parents, parent, guardian or other person having the right to dispose of a dependent or neglected child to enter into an agreement with any association or institution incorporated under any public or private law of this State for the purpose of aiding, caring for or placing in homes such children, and being approved as herein provided, for the surrender of such child to such association or institution, to be taken and cared for by such association or institution or put into a family home. Such agreement may contain any and all proper stipulations to that end, and may authorize the association or institution, by its attorney or agent, to appear in any proceeding for the legal adoption of such child, and consent to its adoption, and the order of the court made upon such consent shall be binding upon the child and its parents or guardian or other person the same as if such parents or guardian or other person were personally in court and consenting thereto, whether made party to the proceeding or not.

SEC. 16. *Foreign corporations.*—No association which is incorporated under the laws of any other state than the State of Illinois shall place any child in any family home within the boundaries of the State of Illinois, either with or without indenture, or for adoption, unless the said association shall have furnished the Board of State Commissioners of Public Charities with such guarantee as they may require that no child shall be brought into the State of Illinois by such society or its agents having any contagious or incurable disease, or having any deformity, or being of feeble mind, or of vicious character, and that said association will promptly receive and remove from the State any child brought into the State of Illinois by its agent which shall become a public charge within the period of five (5) years after being brought into this State. Any person who shall receive, to be placed in a home, or shall place in a home, any child in behalf of any association incorporated in any other state than the State of Illinois which shall not have complied with the requirements of this act, shall be imprisoned in the county

jail not more than thirty days, or fined not less than \$5.00 or more than one hundred (100) dollars, or both in the discretion of the court.

SEC. 17. *Religious preferences.*—The court in committing children shall place them as far as practicable in the care and custody of some individual holding the same religious belief as the parents of said child, or with some association which is controlled by persons of like religious faith of the parents of the said child.

SEC. 18. *County boards of visitors.*—The county judge of each county may appoint a board of six reputable inhabitants, who will serve without compensation, to constitute a board of visitation, whose duty it shall be to visit as often as once a year all institutions, societies and associations receiving children under this act. Said visits shall be made by not less than two of the members of the board, who shall go together or make a joint report; the said board of visitors shall report to the court from time to time the condition of children received by or in the charge of such associations and institutions, and shall make an annual report to the Board of State Commissioners of Public Charities in such form as the board may prescribe. The county board may, at their discretion, make appropriations for the payment of the actual and necessary expenses incurred by the visitors in the discharge of their official duties.

SEC. 19. *Powers of juvenile court.*—The powers and duties herein provided to be exercised by the county court or the judges thereof may, in counties having over 500,000 population, be exercised by the circuit courts and their judges as hereinbefore provided for.

SEC. 20. *Industrial and training schools not affected.*—Nothing in this act shall be construed to repeal any portion of the act to aid industrial schools for girls, the act to provide for and aid training schools for boys, the act to establish the Illinois State Reformatory or the act to provide for a State Home for Juvenile Female Offenders. And in all commitments to said institutions the acts in reference to said institutions shall govern the same.

SEC. 21. *Construction of the act.*—This act shall be liberally construed, to the end that its purpose may be carried out, to-wit: That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in

all cases where it can properly be done the child be placed in an improved family home and become a member of the family by legal adoption or otherwise [pp. 131-37].

16. The Pennsylvania Juvenile Court Act Constitutional

COMMONWEALTH v. FISHER, APPELLANT

213 Pennsylvania State Reports 48 (1905)

Opinion by Mr. JUSTICE BROWN, October 9, 1905:

In a proceeding conducted in the court of quarter sessions of the county of Philadelphia under the provisions of the Act of April 23, 1903, *P.L.* 274, Frank Fisher, the appellant, was committed by that court to the House of Refuge. From the order so committing him an appeal was taken to the Superior Court, which affirmed it: *Commonwealth v. Fisher*, 27 Pa. Superior Ct. 175. The constitutionality of the act of 1903 was the sole question before the court in that case, and is renewed here. The objections of the appellant to the constitutionality of the act, as presented by counsel, are: (a) Under its provisions the defendant was not taken into court by due process of law; (b) he was denied his right of trial before a jury on the charge of the felony for which he had been arrested; (c) the tribunal before which he appeared and which heard the case and committed him to the house of refuge was an unconstitutional body and without jurisdiction; (d) the act provides different punishments for the same offense by a classification of individuals according to age; (e) the act contains more subjects than one, some of which are not expressed in the title. In considering these objections the order in which they are made will not be followed.

The act is entitled: "An act defining the powers of the several courts of quarter sessions of the peace, within this commonwealth, with reference to the care, treatment and control of dependent, neglected, incorrigible and delinquent children, under the age of sixteen years, and providing for the means in which such power may be exercised." By this title notice of the purpose of the act is distinctly given. It is a single one. It is to define what powers the state, as the general guardian of all of its children, commits to the several courts of quarter sessions in exercising special guardianship over

children under the age of sixteen years needing the substitution of its guardianship for that of parents or others. This purpose is expressed in the title in as few words as are consistent with clearness. No one from reading the title can possibly misunderstand the purpose of the act that follows, and Art. III, sec. 3, of the constitution is not offended, if, in passing to the body of the act, nothing is there found but this one single purpose. The preamble to it is a recital that, as the welfare of the state requires that children should be guarded from association and contact with crime and criminals, and as those who, from want of proper parental care or guardianship, may become liable to penalties which ought not to be imposed upon them, it is important that the powers of the court, in respect to the care, treatment and control of dependent, neglected, delinquent and incorrigible children should be clearly distinguished from those exercised by it in the administration of the criminal law. After defining the powers of the court the act proceeds to direct how they are to be exercised in giving effect to its purpose. Nothing in the first nine sections can be read as relating or germane to any other purpose than the one named; and there can be no surer test than this of compliance with the constitutional requirement of the singleness of purpose of an act of assembly.

The objection that "the act offends against a constitutional provision in creating, by its terms, different punishments for the same offense by a classification of individuals," overlooks the fact, hereafter to be noticed, that it is not for the punishment of offenders, but for the salvation of children, and points out the way by which the state undertakes to save, not particular children of a special class, but all children under a certain age, whose salvation may become the duty of the state in the absence of proper parental care or disregard of it by wayward children. No child under the age of sixteen years is excluded from its beneficent provisions. Its protecting arm is for all who have not attained that age and who may need its protection. It is for all children of the same class. That minors may be classified for their best interests and the public welfare, has never been questioned in the legislation relating to them. . . .

No new court is created by the act under consideration. In its

title it is called an act to define the powers of an already existing and ancient court. In caring for the neglected or unfortunate children of the commonwealth, and in defining the powers to be exercised by that court in connection with these children, recognized by the state as its wards requiring its care and protection, jurisdiction is conferred upon that court as the appropriate one, and not upon a new one created by the act. The court of quarter sessions is not simply a criminal court. The constitution recognizes it, but says nothing as to its jurisdiction. Its existence antedates our colonial times, and, by the common law and statutes, both here and in England, it has for generations been a court of broad general police powers in no way connected with its criminal jurisdiction. Innumerable statutes upon our own books during the last two centuries attest this. With its jurisdiction unrestricted by the constitution, it is for the legislature to declare what shall be exercised by it as a general police court, and instead of creating a distinctively new court, the act of 1903 does nothing more than confer additional powers upon the old court and clearly define them. . . . The court of quarter sessions has for many years exercised jurisdiction over the settlement of paupers, over the relation of a man to his wife and children in desertion cases, in surety of the peace cases, in the granting of liquor licenses, and in very many of the ways in which the public welfare is involved, where there is neither indictment nor trial by jury. . . . It is a mere convenient designation of the court of quarter sessions to call it, when caring for children, a juvenile court, but no such court, as an independent tribunal, is created. It is still the court of quarter sessions before which the proceedings are conducted, and though that court, in so conducting them, is to be known as the juvenile court, the records are still those of the court of quarter sessions. . . .

To save a child from becoming a criminal, or from continuing in a career of crime, to end in maturer years in public punishment and disgrace, the legislature surely may provide for the salvation of such a child, if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection. . . . The act simply provides how children who

ought to be saved may reach the court to be saved. If experience should show that there ought to be other ways for it to get there, the legislature can, and undoubtedly will, adopt them, and they will never be regarded as undue processes for depriving a child of its liberty or property as a penalty for crime committed.

The last reason to be noticed why the act should be declared unconstitutional is that it denies the appellant a trial by jury. Here again is the fallacy, that he was tried by the court for any offense. "The right of trial by jury shall remain inviolate," are the words of the bill of rights, and no act of the legislature can deny this right to any citizen, young or old, minor or adult, if he is to be tried for a crime against the commonwealth. But there is no trial for any crime here, and the act is operative only when there is to be no trial. The very purpose of the act is to prevent a trial. . . . The court passes upon nothing but the propriety of an effort to save it; and if a worthy subject for an effort of salvation, that effort is made in the way directed by the act. The act is but an exercise by the state of its supreme power over the welfare of its children, a power under which it can take a child from its father, and let it go where it will, without committing it to any guardianship or any institution, if the welfare of the child, taking its age into consideration, can be thus best promoted. . . .

None of the objections urged against the constitutionality of the act can prevail. The assignments of error are, therefore, all overruled and the order of the Superior Court, affirming the commitment below, is affirmed.

17. The Illinois Law Sustained

LINDSAY v. LINDSAY

257 Illinois 328 (1913)

J. FARMER: This is a writ of error and was sued out in the name of Elizabeth Lindsay, William Lindsay and Otoman Zar-Adusht Hanish to review a decree entered by a judge of the circuit court of Cook county sitting in the branch known as the juvenile court. Defendants in error filed a plea denying the right of all of plaintiffs in error to the writ and an issue of law was raised by a demurrer

to said plea. At the last October term an opinion was filed holding that Elizabeth Lindsay was not entitled to the writ or to join in the assignment of errors but that the other two plaintiffs in error had a right to sue out the writ and have the decree reviewed. (*Lindsay v. Lindsay*, 255 Ill. 442.) Defendants in error have now joined in error and filed briefs on the merits of the case. . . .

The residence of the child, William Lindsay, was with his mother, in Pennsylvania or New York. It is not clear in which of those States they resided, but it is not disputed that they were not residents of this State but were in the State on a visit, or temporarily, when the proceeding was instituted in the juvenile branch of the circuit court.

Plaintiffs in error contend (1) that the act known as the Juvenile Court act is in violation of the Federal constitution and the constitution of this State; (2) that William Lindsay and his mother being residents of another State, temporarily stopping in this State, were not subject to the jurisdiction of the court in a proceeding under the Juvenile Court act; and (3) that William Lindsay was not a dependent, neglected or delinquent child and his mother an unfit person to have custody and control of him.

The principal grounds urged against the validity of the act are: (1) It creates a new court, termed the "juvenile court;" (2) it denies the constitutional right of trial by jury; (3) it reduces the child to a state of involuntary servitude in cases other than as a punishment for crime; and (4) it deprives children and the parents of children of liberty, property and the right to the pursuit of happiness without due process of law. Particular objections made to specific sections of the act are unnecessary to a decision of this case and will therefore receive no discussion.

We entertain no doubt of the constitutional power of the legislature to pass an act of the character here involved, for the protection of dependent, neglected or delinquent children. Acts in many respects similar, in principle, for the protection of delinquent, neglected and dependent children have existed in some States for years, but acts like the one here being considered are of comparatively recent origin. This act was originally adopted in 1899, and is said by the editor of the eleventh and latest edition of Wharton's *Crimi-*

nal Law to be the first juvenile court act, as such acts are now generally known, adopted by any State. Similar acts have since been adopted by several other States and have been uniformly sustained as valid legislation, except in the State of Michigan, where the acts held invalid were subject to objections not found in our statute. Our statute and those of a similar character treat children coming within their provisions as wards of the State to be protected rather than as criminals to be punished, and their purpose is to save them from the possible effects of delinquency and neglect liable to result in their leading a criminal career. The purpose of such legislation is, we think, rightfully claimed to be unquestionably in advance of previous legislation dealing with children as criminals.

Our statute does not, as contended, create a new court unauthorized by the constitution. The decree which this writ of error is sued out to review was rendered by a judge of the circuit court of Cook county designated by the other judges of said court, pursuant to authority conferred by the act, to hear causes arising under said act. The judge so sitting is a circuit judge and the court in which the proceedings were held is a circuit court. The legislature of Pennsylvania passed an act defining the powers of the several courts of Quarter Sessions of the Peace with reference to the care, treatment and control of dependent, neglected, incorrigible and delinquent children under the age of sixteen years. The validity of the act came before the Supreme Court of that State, and one of the objections urged to it was that it provided for an unconstitutional tribunal. The Supreme Court said the act did not create a new court; that the court of quarter sessions was a constitutional court, and the legislature, recognizing it as an appropriate one upon which to confer jurisdiction in the care of neglected and unfortunate children recognized by the State as its wards and requiring its protection, had the constitutional power to confer such jurisdiction upon that court. (*Commonwealth v. Fisher*, 213 Pa. St. 48: 5 Am. & Eng. Ann. Cas. 92.) Our statute gives circuit and county courts concurrent jurisdiction in cases arising under it, and while it provides that the court exercising the powers and jurisdiction conferred by the act may for convenience sake be called juvenile court, it does not create a new court but delegates powers to constitutional courts already

existing. The prerogative of the State arising out of its power and duty, as *parens patriae*, to protect the interests of infants has always been exercised by courts of chancery. In *Wellesley v. Wellesley*, 2 Bligh, (N.S.) 142, Lord Beresford said the right of a chancellor to exercise such powers had not been questioned in one hundred and fifty years. This jurisdiction is by the Juvenile Court act conferred upon juvenile courts. *Witter v. County Comrs.* 256 Ill. 616.

Section 2 of the act under consideration authorizes a trial by a jury of six upon the demand of any person interested, or the judge may of his own motion order a jury of the same number to try the case. This, it is claimed, is not such a jury as the constitution guarantees. This contention of plaintiffs in error, and also the contention that the act deprives the child of his right to personal liberty, were decided contrary to the position of plaintiffs in error in *Petition of Ferrier*, 103 Ill. 367, and *County of McLean v. Humphreys*, 104 *id.* 378. In the *Ferrier* case Winifred Breen, a girl nine years old, was found to be a truant from school, without proper parental care and in imminent danger of ruin and harm. In a proceeding in the county court under "An act to aid industrial schools for girls," passed in 1879, she was committed to an industrial school for girls at Evanston and one of the vice-presidents of the school was appointed her guardian, in accordance with the provisions of the act. That act authorized a trial by a jury of six. It was contended in this court that the act violated the constitutional provision that no person should be deprived of liberty without due process of law. This court held that the jurisdiction conferred by the act upon the county court was the same character of jurisdiction exercised by courts of chancery over the persons and property of infants, having its foundation in the prerogative of the State flowing from its general power and duty, as *parens patriae*, to protect those who have no other lawful protector. The court said:

The right to liberty which is guaranteed is not that of entire unrestrainedness of action. Civil government in itself implies an abridgment of natural liberty. "Civil liberty, which is that of a member of society, is no other than natural liberty, so far restrained by human laws, and no farther, as is necessary and expedient for the general welfare." (1 Blackstone's *Com.* 125.) It is not natural but civil liberty of which a person may not be deprived without due process of law. There are restrictions imposed upon personal liberty which spring from

the helpless or dependent condition of individuals in the various relations of life, among them being those of parent and child, guardian and ward, teacher and scholar. There are well recognized powers of control in each of these relations over the actions of the child, ward or scholar, which may be exercised. These are legal and just restraints upon personal liberty which the welfare of society demands, and which, where there is no abuse, entirely consist with the constitutional guaranty of liberty. (See Cooley's *Const. Lim.* 339, 342.) We find here no more than such proper restraint which the child's welfare and the good of the community manifestly require and which rightly pertains to the relations above named, and find no such invasion of the right to personal liberty as requires us to pronounce this statute to be unconstitutional.

On the trial of the case before the county court a jury of twelve men was demanded and was denied. The statute, as we have said, provided for trial by a jury of six. Upon this question the court said:

The constitutional provision that "the right of trial by jury, as heretofore enjoyed, shall remain inviolate," does not apply. This is not a proceeding according to the course of the common law in which the right of a trial by jury is guaranteed, but the proceeding is a statutory one, and the statute, too, enacted since the adoption of the constitution. There was not, at the time of such adoption, the enjoyment of a jury trial in such a case. In reference to this subject, generally, Judge Cooley, in his work on *Constitutional Limitations* (page 319) remarks: "But in those cases which formerly were not triable by jury, if the legislature provide for such a trial now, they may doubtless create for the purpose a statutory tribunal composed of any number of persons, and no question of constitutional power or right could arise."

County of McLean v. Humphreys, *supra*, arose under the same act of 1879 and its validity was again attacked in this court. The court said:

It would be difficult to conceive of a class of persons that more imperatively demands the interposition of the State in their behalf than those we have just enumerated and for whose benefit the act under consideration was adopted, and it would be a sad commentary on our State government if it is true, as is contended, there is no constitutional power in the legislature to provide, by suitable legislation, for their education, control and protection. It is the unquestioned right and imperative duty of every enlightened government, in its character of *parens patriae*, to protect and provide for the comfort and well being of such of its citizens as by reason of infancy, defective understanding, or other misfortune or infirmity, are unable to take care of themselves. The performance of this duty is justly regarded as one of the most important of governmental functions, and all constitutional limitations must be so understood and construed as not to interfere with its proper and legitimate exercise. We per-

ceive no force in the objection that the act in question is an infringement upon the personal liberty of the citizen, as guaranteed by the constitution. The restraints which the act imposes are only such as are essential to the comfort and well being of the unfortunate class of persons who are brought within its provisions. All governmental and parental care necessarily imposes more or less wholesome restraint, and we see nothing in the act which looks beyond this. Assuming, then, as we do, the legislature has the right to provide for the education, support and control of these unfortunate beings, it clearly has the right also to provide the necessary instrumentalities or agencies for the accomplishment of these objects.

We have quoted extensively from these two cases because the principles involved in them are similar to those involved in this case, and we think they answer the objections here made to the Juvenile Court act.

Since 1899 several States have passed acts known as juvenile court acts. In Pennsylvania, Florida, Utah and Idaho the validity of such acts has been passed upon and sustained by the Supreme Courts of these States. . . . Acts of other States not known as juvenile court acts but authorizing the State to take the custody of neglected, abandoned and delinquent children and commit them to institutions established and maintained for their care, and authorizing them to be placed in good homes to be selected by those to whose custody they were committed, have been frequently before the courts and have almost uniformly been sustained. . . .

It is further contended the evidence does not sustain the finding of the decree that William W. Lindsay was a dependent child. The petition filed in this case alleged that William W. Lindsay was a dependent child in that he did not have proper parental care. It is further alleged that his father was dead and he was in the custody or control of his mother, Elizabeth Lindsay, and Hanish; that his mother had wholly neglected and failed to properly care for him; that she was an improper guardian and wholly unable to care for, protect, train and educate said child, by reason of which he had become dependent. Defendants in error do not contend that there is anything in the character or disposition of the boy that would make him amenable to the laws respecting delinquent children. The evidence shows that he is a modest, unassuming boy, twelve years of age, without any bad habits and no apparent evil tendencies, de-

voted to his mother and obedient to her wishes. His father died when he was three years of age, and since that time he has been under his mother's care and has lived with her. He receives an income of from \$1200 to \$1500 per year from his father's estate, which is under the management of the Girard Trust Company of Philadelphia, the income being paid to Mrs. Lindsay for the boy's support and maintenance. Mrs. Lindsay and her boy have lived in various places since the death of the boy's father and have traveled to some extent abroad. In 1910, while residing in New York City, Mrs. Lindsay became a follower of Otoman Zar-Adusht Hanish and a member of the religious organization of which he was the leader. This organization maintains temples or places of worship in Los Angeles, New York City, Chicago, Lowell, Montreal, and in some foreign countries, and purports to teach what is called the Mazdaznan religion. It is the connection of Mrs. Lindsay with this religious society and the association of the boy with Hanish that afford basis for the allegation in the petition that she is an improper guardian of her boy. The evidence shows that while Mrs. Lindsay lived in New York City, and about six months after she became a member of the Mazdaznan religious society, Hanish stayed at her home about ten days. At the same time a Mrs. Hilton and daughters were residing with Mrs. Lindsay. Later Hanish spent three weeks at the home of Mrs. Lindsay, and during that time Miss Brauchmann and Mr. Hesbie were staying there also. The boy went on one occasion from New York City to Montreal to see Hanish, staying, while there, with a Mr. Malley, a member of the society, and from there went to Lowell, Mass., to attend services at the temple. In 1911, while Hanish was in California, the boy was sent to him, traveling alone. Together they visited San Diego, Los Angeles, San Francisco, Seattle, Salt Lake City, Portland, and then returned to Chicago. On part of the return journey they were accompanied by Maurice Clemens, a young man employed by Hanish in connection with his temple services. While on this trip, which occupied about seven weeks, Hanish and the boy sometimes occupied the same room and also slept together. The boy took no part in the services at the temple and was not employed by Hanish. On his travels over the country his expenses were paid by his mother. The evidence shows

that Mrs. Lindsay attended the services at different times at the temples in Lowell, Montreal and New York City, and was on a visit to Chicago for that purpose when the petition was filed in this case. She appears to be a woman of culture and refinement and of more than ordinary intelligence. There is evidence showing that she has great faith in Hanish as the head of the Mazdaznan religion and is a firm believer in the doctrines taught by him, but aside from that there is no evidence that she is in any way an unfit or improper person to have the care and custody of her boy. She seems to be deeply attached to him and very solicitous in regard to his health and welfare. She may have been misguided in her religious views and mistaken as to the best method of educating and training her boy, but we search the record in vain for evidence that he lacked food, clothing or shelter or was being reared in immoral or indecent surroundings. Defendants in error introduced in evidence a book written and published under the supervision of Hanish, called "Inner Studies,"—a philosophical and medical treatise on health and hygiene and the treatment of disease according to the tenets of the Mazdaznan religion, which, it is claimed, shows that its author is a man of perverted character and morally unfit to associate with a boy of the age of William W. Lindsay. A copy of this book was found in the room occupied by Mrs. Lindsay at the home of her sister, in New York City, about a year after she had used the room, but it is not shown that either Mrs. Lindsay or the boy had ever seen or read the book. The book certainly cannot be commended for perusal by anyone, but in the absence of evidence that its principles were being taught to the boy or that he had access to it, we would not be justified in concluding that association with its author would show such a lack of parental care as to make the boy dependent, within the meaning of this statute. There is no proof in the record that the Mazdaznan religion is an immoral religion or that Hanish himself is an immoral man or engaged in immoral practices. Nor is there any proof that in his relations with the boy or the boy's mother he was guilty of any conduct that rendered him an unfit associate.

The purpose of this statute is to extend a protecting hand to unfortunate boys and girls, who, by reason of their own conduct, evil tendencies or improper environment, have proven that the best

interests of society, the welfare of the State and their own good demand that the guardianship of the State be substituted for that of natural parents. To accomplish that purpose the statute should be given a broad and liberal construction, but it should not be held to extend to cases where there is merely a difference of opinion as to the best course to pursue in rearing a child. There should be evidence of neglect, abandonment, incapacity or cruelty on the part of the parent or that the child is being exposed to immorality and vice. The right of parents to the society of their offspring is inherent, and courts should not violate that right upon slight pretext nor unless it is clearly for the best interests of the child to do so. We do not so find the evidence in this case, and for that reason the decree of the circuit court is reversed.

Decree reversed.

18. Probation Officers and Civil Service in Illinois

JOHN WITTER, APPELLEE *v.* THE COUNTY COMMISSIONERS
OF COOK COUNTY ET AL., APPELLANTS

256 Illinois 616 (1912)

Mr. JUSTICE CARTWRIGHT delivered the opinion of the court:

On September 29, 1911, Peter Bartzén, president of the board of commissioners of Cook county, made an order suspending from the office of head probation officer of the juvenile court of Cook county the appellee, John H. Witter, who had held that office for about three years, and also filed with the civil service commission of Cook county charges against him. The charges were heard by the commission, and an order was entered on January 6, 1912, confirming the suspension and directing the discharge of the appellee from said office. On January 17, 1912, appellee filed in the circuit court of Cook county his petition for a common law writ of *certiorari*, requiring the commission to bring into court the record of said proceedings for review. The writ was ordered and return made, and it appeared that by his answer to the charges appellee alleged, among other things, that he was not under the control of the president of the county board but was a subordinate of the juvenile court; that the suspension by Bartzén was wholly without authority of law and that the civil service commission was without power and

authority to hear or consider the charges. The circuit court quashed the proceedings, and the board of county commissioners and civil service commission appealed.

Section 6 of the act in force July 1, 1907, for the establishment of juvenile courts for the treatment, control, maintenance, adoption and guardianship of dependent, neglected and delinquent children (*Laws of 1907*, p. 70) provides that the court shall have authority to appoint or designate one or more discreet persons of good character to serve as probation officers during the pleasure of the court, such probation officers to receive no compensation from the public treasury. The general application of that provision is limited and qualified by two provisos, the first of which provides that in counties having over five hundred thousand population the judges of the circuit court, by rule to be entered of record, shall determine a number of probation officers, including one head probation officer, to be employed during each year, who shall be paid a suitable compensation for their services; that the judges of the court shall notify the president of the board of county commissioners or board of supervisors of the number of probation officers so determined, and the said probation officers, including the head probation officer, shall be appointed in the same manner and under the same rules and regulations as other officers or employees in the said county under the board of commissioners or supervisors. The second provides that in counties having a population of less than five hundred thousand the county judge shall have authority to designate some suitable person to act as probation officer during the pleasure of the court, and such probation officer shall be paid a suitable compensation for his services, to be fixed by the board of county commissioners or board of supervisors, and such board of county commissioners or board of supervisors may, if they deem it advisable, upon the recommendation of the county judge, provide for the employment of additional probation officers and fix their compensation, such additional probation officers to be appointed by the county judge. . . .

Article 3 of the constitution divides the powers of the government into three distinct departments,—the legislative, executive and judicial,—and prohibits the exercise of any power belonging to either department by any person or collection of persons belonging to

another department, except as expressly directed or permitted by the constitution. The body that deliberates and enacts laws, whether for the whole State or (by delegation) for minor subdivisions and municipalities, is legislative. The executive power is that power which compels obedience to the laws and executes them. The instrumentalities employed for that purpose are officers who are elected or appointed and who are charged with the enforcement of the laws. (*People v. Morgan*, 90 Ill. 558.) The judicial power is that which adjudicates upon and protects the rights and interests of individual citizens and to that end construes and applies the laws. It is that power which applies the law and adjudges in particular cases. (*Owners of Lands v. People*, 113 Ill. 296; *People v. Chase*, 165 *id.* 527.) The question to be determined in this case is, into which class of these different powers and duties does the office of probation officer fall? If his powers and duties belong to the judicial department, he must either be elected by the people as the ultimate sovereign authority of the State, or his appointment and removal must be vested in the judicial department, and his appointment cannot be delegated by the legislature to the board of county commissioners nor his removal to the civil service commission. The question is not to be decided upon the mere fact that the duties of probation officers are performed in or in connection with the court. The three departments aid in the administration of the government, each one performing its different functions, and article 3 does not mean that the legislative, executive and judicial powers shall be kept so entirely separate and distinct as to have no connection with or dependence upon each other. (*Field v. People*, 2 Scam. 79.) It is a legislative function to provide places for holding courts and to provide for the expenses of the judicial system and the compensation of judicial officers, and the legislature may invest the board of county commissioners with the care and custody of property belonging to the county although the property is used in the exercise of judicial power by the judicial department. (*Dahnke v. People*, 168 Ill. 102.) A sheriff and clerk are essential to a court and to the exercise of judicial power, but the one performs executive and the other clerical duties, merely. The judicial power is exercised by the judge, with such assistants as he may lawfully have to aid him in adjudicating

upon and protecting the rights and interests of individuals. The juvenile court exercises a jurisdiction of the court of chancery which is of very ancient origin, and which extends to the care of the persons of infants within the jurisdiction and to their protection and education. This court long ago declared it to be a power, which exists in every well regulated society, to see that infants within the jurisdiction of the court are not abused, defrauded or neglected, and that they shall be reared and educated under such influences as will make them good citizens, and that this power is vested in the court of chancery, representing the government. (*Cowles v. Cowles*, 3 Gilm. 435.) The parental care of the State is administered by the juvenile court, and that court performs a purely judicial function in the hearing of causes brought before it. The infant is not brought before the court as a defendant charged with an infraction of the laws, but is brought within the jurisdiction of the court to receive its care and protection. The neglected, dependent or delinquent child ordinarily has no means to employ counsel. It would be impossible for the court to make personal investigation of each case so as to act intelligently, and it is essential that the court act only upon a thorough investigation of the facts and a consideration of every circumstance that will enable the court to enter a just decree. Accordingly it has been deemed wise to provide by statute for one or more assistants to the court under the name of probation officers. By the statute it is the duty of the clerk, if practicable, to notify the probation officer in advance when any child is to be brought before the court. It is the duty of the probation officer to make such investigation as may be required by the court; to be present in court in order to represent the interest of the child when the case is heard; to furnish to the court such information and assistance as the judge may require, and to take such charge of any child, before and after trial, as may be directed by the court. The investigation to be made by the probation officer is the investigation of the court through that officer as his assistant, by whom he performs the judicial duties and exercises judicial power. Whenever a minor is a party to a proceeding in any court it is the duty of that court to see that the minor is properly represented by guardian or next friend. Courts of chancery have always appointed guardians *ad litem* for minors

who are parties to suits and controlled them by compelling performance of their duties. The probation officer is practically a guardian *ad litem* for each child brought into the court and has enlarged duties under the statute. Like attorneys, masters in chancery, receivers, commissioners, referees, and other similar officers, probation officers are mere assistants of the court in the performance of judicial functions. The power to appoint and remove such officers is necessary to the independent exercise of judicial power and the separation of the judicial department from the other departments of the government which are prohibited from exercising its functions. The judicial power includes the authority to select persons whose services may be required as assistants to the judge in the performance of judicial duties and the exercise of judicial power. (*In re Day*, 181 Ill. 73; *State v. Noble*, 118 Ind. 350; *In re Mosness*, 39 Wis. 509.) Undoubtedly the legislative department may, in the legitimate exercise of legislative power, prescribe reasonable qualifications which will exclude improper persons, or may make removal from office a consequence of violation of law; but the judicial department could not be separate from the other departments of the government and free from interference in the exercise of judicial functions if it must accept its assistants from another department or a commission which makes the selection.

The first proviso singles out from all the counties of the State such counties as may have a population of over five hundred thousand and purports to turn over to the board of county commissioners or board of supervisors in such counties the power of appointment of officers and assistants of the juvenile court in the discharge of judicial duty. The provision is void because it is in conflict with article 3 of the constitution. When the invalid portion of the proviso is rejected there remains a complete and valid statute applicable to the whole State, by which probation officers are appointed by the court to hold office during the pleasure of the court, and the act, as a whole, is not affected. *People v. Olsen*, 222 Ill. 117; *People v. Munroe*, 227 *id.* 604; *Smith v. Claussen Park Drainage and Levee District*, 229 *id.* 155.

Peter Bartzen, as president of the county board, had no authority to suspend the appellee from office or to prefer charges against him,

and the civil service commission had no authority to hear the charges or dismiss appellee from the office which he held.

The judgment is affirmed.

Mr. JUSTICE CARTER, dissenting:

Had the opinion in this case held the provision of the Probation law in question unconstitutional because it was special legislation, as at present advised I should have been disposed to concur in the decision. I cannot, however, agree with the reasoning of this opinion that the probation officers, under this law, perform judicial functions. Most, if not all, of their duties, it seems to me, are ministerial or executive. Even if some duties are judicial in nature, I am not prepared to assent to the conclusion that the power of appointing such officers is vested solely in the courts. The constitution does not undertake to define what is meant by judicial power. That power has been defined, in general terms, as the one "to adjudicate upon and protect the rights and interests of individual citizens, and to that end to construe and apply the laws." (Cooley's *Const. Lim.*—6th ed.—109.) It should not be held to apply to cases where judgment is exercised as incident to the execution of ministerial power. (*Owners of Lands v. People*, 113 Ill. 296.) While official duties are, in general, classed under the three heads of legislative, executive and judicial, such classification is not exact, and the duties of many officers cannot be exclusively arranged under either of these heads. (3 Cooley on *Torts*,—3d ed.—p. 753.) It has been repeatedly held by this court that judicial officers can perform ministerial duties and executive officers *quasi* judicial duties. If the reasoning of this opinion be carried to its logical conclusion, are not the laws authorizing the Governor to appoint public administrators and public guardians unconstitutional, as well as the law which permits a testator to name his executor? True, the public guardian, public administrator or executor is accepted and appointed by the proper court thereafter. So must probation officers be appointed by the court to investigate the special case. The conclusion that probation officers, charged with the duties of their office under the Juvenile Court act, can only be appointed by the courts, is in my judgment not required by the constitution, but, on the contrary, is not in harmony with its fundamental principles.

Mr. CHIEF JUSTICE DUNN, also dissenting.

19. The Jurisdiction of the Criminal Court over the
Wards of the Juvenile Court

THE PEOPLE OF THE STATE OF ILLINOIS, DEFENDANT IN ERROR v.
SUSIE LATTIMORE, PLAINTIFF IN ERROR

362 Illinois 206 (1935)

Mr. JUSTICE HERRICK delivered the opinion of the court:

The defendant, Susie Lattimore, on her trial in the criminal court of Cook county before that court, a jury having been waived, was found guilty of murder. She was sentenced upon such finding to imprisonment for twenty-five years in the Illinois State Reformatory for Women at Dwight. A review of such judgment is here sought by the defendant.

The facts show that the defendant was guilty of an atrocious murder, and that at the time of the commission of the crime, and at her trial, she was between fifteen and sixteen years of age. It was stipulated that the defendant for some misconduct not connected with the present charge, was, more than four months prior to the trial on the indictment here, declared delinquent in the juvenile court of Cook county. In the criminal court the defendant contended that such court was without jurisdiction to proceed with the trial of the cause and that the criminal court should transfer the cause to the juvenile court. The criminal court decided that issue adversely to the defendant. The sole question presented here for decision is whether the defendant, a ward of the juvenile court, who had been indicted for murder, can on such indictment be tried in the criminal court without the consent of the juvenile court.

Section 9a of chapter 23 (Smith's *Stat.* 1933, par. 199, p. 288; Cahill's *Stat.* 1933, par. 328, p. 272), relating to the juvenile court, provides: "The court may in its discretion in any case of a delinquent child permit such child to be proceeded against in accordance with the laws that may be in force in this State governing the commission of crimes or violations of city, village, or town ordinance. *In such case the petition filed under this act shall be dismissed.*"

Among the definitions given to the term "delinquent child" by section 2 [1] of chapter 23, (Smith's *Stat.* 1933, par. 190, p. 285; Cahill's *Stat.* 1933, par. 319, p. 269) is, "any male child who while under the age of seventeen years or any female child who while under the age of eighteen years, violates any law of this State," etc.

In support of her position the defendant urges that under the provisions of section 9a of chapter 23 the juvenile court had the judicial discretion to determine whether the defendant here, "a delinquent child," might be proceeded against on the indictment for murder pending against her in the criminal court of Cook county, and that by reason of such lack of consent by the juvenile court the criminal court of Cook county was precluded from trying her on such indictment.

Article 6 of the constitution of 1870 created our judicial system. By section 26 of that article the criminal court of Cook county was established and its jurisdiction defined. While the circuit court is a court of general jurisdiction, yet the jurisdiction of the circuit court of Cook county is not necessarily the same in all respects as the circuit courts of other counties of the State. It does not have concurrent jurisdiction with the criminal court of Cook county of criminal causes, but jurisdiction of criminal cases is by section 26 of our constitution placed in the criminal court of Cook county. (*People v. Feinberg*, 348 Ill. 549; *People v. Warren*, 260 *id.* 297.) The juvenile court is a court of limited jurisdiction. The legislature is without authority to confer upon an inferior court the power to stay a court created by the constitution from proceeding with the trial of a cause jurisdiction of which is expressly granted to it by the constitution. Nor, in our opinion, was it the legislative intent to attempt to confer such power upon the juvenile court. Provision is made by section 4 of chapter 23 for the filing of a petition to have a child declared delinquent. Other sections provide for summons and a hearing on the issue as to whether the child named is a "delinquent child" within the purview of the act. Some meaning must be given the clause italicized in section 9a. That clause manifestly could not refer to the dismissal of a petition whereon a final judgment had been entered finding that the child named in the petition was delinquent but necessarily refers to a then pending, undetermined proceeding in that court. The section granting the discretion to the juvenile court clearly refers to a case where a child capable, under the law, of committing a criminal offense is named in the petition and his or her status is the subject of the inquiry. If the facts developed by the hearing show a criminal offense has been committed by such child, the juvenile court, in its discretion, may refuse to

take custody of the child as a delinquent, dismiss the petition and direct the child to be delivered to the proper authorities for trial on the criminal charge. It was not intended by the legislature that the juvenile court should be made a haven of refuge where a delinquent child of the age recognized by law as capable of committing a crime should be immune from punishment for violation of the criminal laws of the State, committed by such child subsequent to his or her being declared a delinquent child.

The criminal court of Cook county had jurisdiction of the person of the defendant and of the cause on which she was placed on trial. The judgment of the criminal court is affirmed.

Mr. CHIEF JUSTICE STONE, dissenting.

20. Conviction of a Boy of Fifteen under the
Criminal Law of New Jersey

IN RE MEI

122 New Jersey Equity Reports 125 (1937)

The opinion of the court was delivered by CASE, J. On January 14, 1936, a grand jury returned to the Hudson oyer and terminer an indictment for murder against Giro L. Mei. Shortly thereafter the oyer committed the accused on that charge. The court of chancery, by writ of *habeas corpus*, commanded the sheriff and jailor to show cause for the detention, and in response the commitment issued by the court of oyer and terminer was presented. Chancery found that the accused was lawfully committed and dismissed the writ of *habeas corpus*. The appeal is from the order of dismissal. The fundamental question is whether the order of commitment was valid, and to answer this we inquire whether the oyer and terminer had jurisdiction to entertain and retain the charge of murder against Mei. If the answer be in the affirmative, the court of chancery was right in its conclusion. Other questions are presented but are without controlling significance on such a disposition.

At the time of the alleged murder Mei was of the age of fifteen years and four months. From this it is argued on behalf of the appellant that Mei could commit no crime, that the court of oyer and terminer therefore had no power to apprehend or detain Mei's person and that the order of incarceration which it undertook to

make was void. It was held by this court (*In re Daniecki*, 119 N.J. Eq. 359, in adopting the opinion of the late Vice-Chancellor Backes printed in 117 N.J. Eq. 527), that the court of oyer and terminer had not been divested of its jurisdiction in cases of murder and that the juvenile court was not adequately established to try indictments for that enormous offense. It is argued that that determination was error.¹ We think that it was not. But it is said further that the recent changes in the statutory law have outmoded the reasoning of that opinion and have made it of no value as a precedent for our present guidance. This assertion rests upon two statutory enactments, namely, chapters 284 and 285 of *P.L. 1935*. The latter act provides that a person under the age of sixteen is deemed incapable of committing a crime, and the former that "juvenile delinquency is hereby defined as the commission by a child under sixteen years of age of any act which when committed by a person of the age of sixteen years or over would constitute: (a) a felony. . . ." Chapter 285 is clearly in complement of chapter 284 and is meant to go so far as, and no further than, the correlative features of the latter act.

Upon the basis of these statutes it is said that a lad under sixteen years of age may not commit murder because murder is a felony; therefore that Mei, being under age, could not commit the crime, may not be lawfully indicted for the offense and may not be deprived of his liberty upon the basis thereof; that if Mei did that which, except for his age, would have been murder, he is chargeable with an act of juvenile delinquency and is subject only to the jurisdiction of the juvenile court. But juvenile delinquency is a generic term, like crime. It embraces everything from murder to habitual truancy from school. A specific act may be a crime, but before a person may be put to his trial he must be charged, not just with committing crime, but with the specific act, so that he may defend against it and so that it may be known whether the act charged against him is indeed a crime. Likewise a boy may not be loosely charged with juvenile delinquency. He must be charged with the specific offense which, if he did it, makes him a juvenile delinquent. *People v. Lewis*, 260 N.Y. 171; 183 N.E. Rep. 353, 355. The lad, then, would

¹ [Charles Evans Hughes, Jr., Bernard Flexner, and Reuben Oppenheimer argued as *amici curiae* that the juvenile court should have jurisdiction.—EDITOR.]

be charged with being a juvenile delinquent in that he maliciously and unlawfully took the life of a human being. That leads us directly to the constitution and to the inquiry whether the offense so charged is within the purview of the constitution; and, if so, whether the statute gives to the accused person his guarantees, for if it does not, then the ancient legal machinery, which does so, is still operative.

Article I of our constitution provides in part as follows: (7) "The right of a trial by jury shall remain inviolate . . ."; (8) "In all criminal prosecutions the accused shall have the right to a . . . public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of the counsel in his defense"; (9) "No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury. . . ."

Under the Juvenile Court Act a minor under sixteen years of age is chargeable on mere information and belief and without indictment. He is tried, without a jury, by a judge who may conduct the examination of witnesses without permitting the person charged to have the assistance of counsel therein, and who may exclude all persons except those directly interested in the case. Evidence irrelevant, in the ordinary sense, to the issue is admitted. The powers of accusation, trial, prosecution, defense, determination and disposition are, or may be under the authority of the statute, concentrated in a single officer. It is clear that these statutory provisions do not carry the constitutional procedure. It remains to consider whether they are within the field of the constitution.

Even though the act of murder be statutorily taken out of the technical classification of crimes and the youthful perpetrator be subjected to a confinement that is curative rather than punitive, it remains that the lad who commits that act has done a terrible thing which, independent of the exactions of the law, will bring him into social obloquy. The offense remains a crime against divine law, an infraction of the most solemn prohibition enjoyed by the decalogue against man in his social relations. It is one of the few acts specifically named by Blackstone (1 *Comm.* 54) as *mala in se*—offenses

which are such from their own nature irrespective of the statute—"which contract no additional turpitude from being declared unlawful by the inferior legislature." Chief Justice Kinsey, in *State v. Rockafellow*: 6 N.J. Law 332, 339, said that "without a legal presentment, no man can, under our administration of the laws, be tried for any heinous offense. . . ." The malicious killing of a human being remains an offense—even if not designated a crime—under the juvenile court legislation; and it, beyond denial, is a heinous act. The legislation does not permit the offense to go unnoticed or uncharged. It is obviously the legislative purpose that the offender shall, in some fashion and under some nomenclature, be apprehended, charged and dealt with as one from whom society is to be protected until at least curative methods, proportioned to the need, have been applied. For a juvenile court judge to find a lad guilty of delinquency in that he has committed an act, which, if done by one above the age of sixteen years, would be murder, he must, of course, adjudge, in effect, that the lad has combined all of the factors of that awful crime and is saved from prosecution and presumably from conviction only by his age. Amongst the incidents to such a finding is that of the presence of criminal intent, for otherwise the act would not, in a person of any age, be murder. The damage to reputation that results from, and the shame of, the accusation are elements which must be considered in determining whether the preliminary sanction of a grand jury may be absolutely dispensed with. *Richardson v. State Board of Control*, 99 N.J. Law. 516.

We think that a charge which is in effect that of murder cuts so deeply into human emotions, collides so violently with life's experiences and fair expectations, and is so horrible in fact and in the contemplation of society, that it remains a crime within the purview of the constitution, whatever name and whatever treatment may be appended to it by the legislature.

Whatever authority the juvenile court may have with respect to a proceeding instituted and prosecuted therein without protest from the accused, we find that a charge which grounds in an act of murder constitutes a criminal accusation within the meaning of the constitution. We have seen that a charge of delinquency grounded in

murder must, as in all other instances, specify the act complained of. It is plain therefore that if a lad be charged with being a delinquent in that he has done that which, in a person of age, would be murder, the charge will carry upon its face that which entitles the accused to the constitutional procedure, just as completely as if such a reservation had been set out in terms in the juvenile court statute. Cf. *P.L. 1903*, chap. 219, sec. 3; *P.L. 1912*, chap. 353, sec. 8; *P.L. 1929*, chap. 53. That procedure may presently be had only at the instance of the grand jury and of the court of oyer and terminer. The procedure therein must still be available. If that be so, then those instrumentalities have not been divested of jurisdiction.

We conclude that the Juvenile Court act has not shorn the court of oyer and terminer of its jurisdiction in murder cases. The substantial purpose of the legislative plan that it should do so having failed, we consider that, for the reasons stated earlier in this opinion (*P.L. 1935*, chap. 285), does not apply. Murder is indictable and triable as heretofore. It follows that the commitment under review is valid.

The decree below will be affirmed.¹

21. The "Boys' Court" of Chicago

DOROTHY WILLIAMS BURKE: YOUTH AND CRIME (UNITED STATES
CHILDREN'S BUREAU PUBLICATION NO. 196
WASHINGTON, D.C., 1930)

The Chicago juvenile court, which has jurisdiction over delinquent boys under the age of 17 years, was the pioneer juvenile court in the United States. Chicago has also been a pioneer in the development of specialized court treatment of boys from 17 to 20 years of age, inclusive. The municipal court act of 1905 centralized in one court, with various branches, inferior civil and criminal jurisdiction throughout the city. A boys' court branch was established by rule of court in 1914 . . . [p. 21].

The boys' court has jurisdiction over misdemeanors and quasi-criminal offenses committed by boys of the ages specified, and conducts preliminary examinations in felony cases involving boys of

¹ [The vote of the court was 9 to 4 for affirmance.—EDITOR.]

these ages, holding them for action by the grand jury. If an indictment is returned such cases are tried by the criminal court. The criminal court is composed of judges of the superior and circuit courts, and does not have a separate division for younger defendants. The jurisdiction and procedure of the boys' court are the same as those of the other branches of the court of which it is a part, but the study made by the Children's Bureau showed that the following characteristics distinguished it from the branch courts having the usual criminal and quasi-criminal jurisdiction.

1. Segregation of boys' cases from other cases, eliminating association in court of boys with older criminals. . . .
2. Some degree of specialization of judicial function as a result of the segregation of cases. . . .
3. The beginnings of social service in boys' cases through the social-service department of the court and representatives of three private organizations working with it . . . [pp. 21-22].

A large proportion (63 per cent) of 948 cases studied, disposed of by the boys' court, the grand jury, or the criminal court, were dismissed or discharged. However, in 8 per cent the boys received informal supervision from private agencies after discharge or during continuance. . . . In 23 per cent the boy was either placed on probation or received informal supervision. Cases in which the boy was sentenced to an institution or committed for nonpayment of fine comprised 15 per cent of the total, and in 3 per cent fines were imposed and paid. The proportion of Negro boys committed to institutions was higher than the proportion of white boys, and as a rule they were committed for longer periods. . . .

A large proportion of the cases in which fines were imposed resulted in imprisonment for nonpayment of fine. In only 25 of the 80 cases included in the study in which fines were imposed was the fine paid . . . [p. 24].

The percentage of cases placed on official probation was low (15 per cent of those studied). Information obtained in this inquiry from the boys and their parents indicated that, although some of the probation officers understood boys' problems and were dealing

with them effectively, the majority of the boys on probation received supervision of only the most routine kind . . . [p. 25].

Three-fifths of the 909 boys were under 19 years of age. Nearly all the boys had lived in Chicago at least two months, and nearly all were unmarried. The families of more than half the boys (53 per cent) were known to at least one social agency. . . .

Few of the boys were attending school at the time of their offense, and practically all were or had been at work. However, 36 per cent of those for whom employment status was reported were unemployed at the time of their offense. More than two-thirds (68 per cent) of the boys reporting school grade had completed the sixth, seventh, or eighth grade; 24 per cent had attended high school; and 8 per cent had completed less than six grades. . . .

Of the 909 boys, 75 per cent had not been dealt with officially by the juvenile court and 25 per cent had delinquency records in the Chicago juvenile court . . . [p. 26].

Of the boys who were brought before the boys' court and had juvenile-court records 48 per cent of those for whom information was obtained concerning the disposition of the last case in the juvenile court had been committed to an institution, 21 per cent had been placed on probation, and the cases of 27 per cent had been dismissed, dropped, or continued generally . . . [p. 27].

The case histories show a comparatively small proportion of "hardened criminals" among any of the groups dealt with by the boys' court. Like all other members of the human family, these boys had their own particular problems and needs. Complicating factors in the delinquencies of many of them were broken homes; poverty; lack of intelligent and sympathetic guidance at home; difficulties in school; shifting of jobs, with more or less unemployment; bad companions, including gang affiliations; and, in a considerable number of instances, mental dullness ranging down to definite mental defect, and emotional instability. The court experience of some of the boys was more or less accidental, or their delinquency was a passing phase in their transition from boyhood to manhood. Among these were boys with good homes, fair education, and promising vocational adjustments, as well as boys who were hampered by family problems and bad environment . . . [pp. 27-28].

Boys from 16 to 20 not convicted of a capital offense might be sentenced to the Illinois State Reformatory at Pontiac and usually called "Pontiac," about 90 miles from Chicago, instead of to the State penitentiary or the county jail. This State institution was under the control of the State department of public welfare. Men between the ages of 21 and 26 might also be sentenced under certain conditions and for certain offenses to the reformatory. Few boys were sent to this institution by the boys' court, but more of this age were committed to it by the criminal court. Sentences were for the term provided by law for the offense for which the person was convicted [p. 68].

By State law the inmates between 16 and 21 years of age had to be separated from those between 21 and 26 years of age. Additional segregation had been provided, but officials of the institution said that more segregation was needed than had been possible because of the expense. . . .

The boys were kept in cells, usually one boy to a cell, although when the reformatory was crowded two were placed in one cell. Each cell had a small window and toilet facilities that were clean but not in good repair. . . .

Boys who had not completed the eighth grade of the public schools had to attend school at least half of each school day. Nominally work was required the other half of the day. Although 278 acres surround the institution, it was found difficult to furnish employment for all. The boys themselves complained of the lack of work. Many could not get on the working squads and had no work except cleaning cells.

In good weather the boys had a recreation period of 45 minutes a day when, under the direction of a play director, they played baseball, handball, pushball, and football, and ran races. The school ball team played outside teams. The boys were given military drills on the drill field in the center of the grounds surrounded by buildings and walls. The daily routine of the inmates began at 5:30 in the morning and ended about 4:30 in the afternoon, when they were locked in their cells. The exact hours varied with the season of the year, so that all cells might be locked before dark. Meals were served in a large dining hall [pp. 68-69].

Boys of 16 and 17 years could be sentenced to the penitentiary only when convicted of murder, manslaughter, rape, robbery, burglary, or arson. Boys 18 years of age and under 21 and, under certain conditions, boys between the ages of 21 and 26, convicted of felonies, punishable by imprisonment in the penitentiary, might be committed in the discretion of the court to the reformatory instead of the Illinois State Penitentiary; they had to be sentenced to the latter in cases of capital offenses . . . [p. 69].

In the 972 cases selected for study disorderly conduct and offenses against property comprised more than four-fifths of all the charges, 46.8 per cent being charges of disorderly conduct and 35.4 per cent offenses against property . . . [p. 72].

Crimes of violence and injuries to persons formed 8.4 per cent of the charges on which boys involved in the selected cases were brought to court . . . [p. 73].

Sex offenses and sex crimes comprised 3.9 per cent of the charges. Not quite half of these were felonies, most of them rape. Most of the other cases were charges of contributing to the delinquency of a child and indecent exposure or immoral exhibition. A few charges (4.3 per cent) were classified as offenses against public health and safety; they included chiefly carrying concealed weapons and violations of automobile laws and ordinances. . . .

A large variety of offenses were covered by the charge of disorderly conduct. Often other more serious charges were dropped and the boy prosecuted only on this relatively light charge . . . [p. 74].

After a boy had been arrested for suspected implication in a crime—as a rule, theft—and the connection could not be proved he could usually be prosecuted, under this ordinance,¹ for disorderly conduct . . . [pp. 74-75].

Another large class of arrests on suspicion included under disorderly conduct were those not connected with a particular offense, which were usually described by the boy as being "picked up." These arrests might be made because the boy's movements at the moment or his general reputation or the reputation of his gang made him an object of suspicion. The boy might be fined, placed on probation, or discharged . . . [p. 75].

¹ [Refers to city ordinance which defines disorderly conduct.—EDITOR.]

JUVENILE OFFENDERS AGAINST FEDERAL LAWS

22. Federal Juvenile Offenders Prior to 1932

U.S. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT
REPORT ON THE CHILD OFFENDER IN THE FEDERAL SYSTEM
OF JUSTICE (WASHINGTON, D.C., 1931)¹

The creation and development of the juvenile court in the American States has been made possible by a line plainly drawn between child and adult in the State law. The child offender is generally dealt with on a noncriminal basis and has been protected from prosecution and conviction from crime. The State has come to regard him as its ward. It has assumed guardianship over him. It has undertaken to safeguard, train, and educate rather than to punish him. It has substituted social for penal methods; the concept of juvenile delinquency for that of crime. This clear distinction, however, has never been made in the Federal Law. The child approaches the courts of the United States on the same footing as the adult. The concept of juvenile delinquency is unknown to the Federal Penal Code.

Child offenders, however, are constantly being brought before the Federal courts and imprisoned for breaking Federal laws. There were 2,243 boys and girls of 18 years and under who were held in jail for Federal offenses during the six months ending December 31, 1930. These young people had violated various Federal laws such as the prohibition acts, the immigration acts, the motor vehicle theft act, the antinarcotic act, the white slave act, and the postal laws. Their offenses, however, were in no way more serious than the average run of juvenile cases. There were runaway boys who had happened to cross an international boundary; boys who had driven a car without the owner's consent and had happened to cross a State line; boys who had taken goods from a freight car or stolen money in a building which happened to house a post office; young sex offenders who had happened to pass from one State into another.

The great majority of juvenile offenders against the Federal laws are typical delinquency cases. It is only by accident that they have fallen within the Federal jurisdiction. Their offenses are such as

¹ See also *The Federal Courts and the Delinquent Child* (U.S. Children's Bureau Publication No. 103; Washington, D.C., 1922).

call for the application of community guardianship. Any State would apply to them the usual technique of juvenile delinquency treatment. Yet the Federal Government classes them with adult criminals and moves against them with the same machinery which it uses in dealing with hardened offenders.

These children are arrested by United States marshals or local police, brought before United States commissioners, prosecuted by United States attorneys, indicted, arraigned, and tried in the Federal district courts. The judges who are compelled to hear their cases must usually act in the absence of full knowledge of the child's previous history. The proceedings do not and can not well employ the methods of a juvenile court. The Federal probation machinery is designed to handle adults and is, as yet, inadequate properly to meet that task. The Federal system of justice lacks the equipment which would be necessary if it were to give the case of the child offender the peculiar consideration which it should receive.

Nor has the Federal system adequate facilities for the care of the child offender, either pending trial or after conviction. In those States which have been in a position to deal most intelligently with juvenile offenders, provision is made for their supervision in their own homes or in foster homes or in local reformatories. The Federal Government is unable so to deal with child offenders. Many of them are confined while awaiting trial or after sentence in local jails which do not provide for the effective separation of child and adult. In some of these jails the conditions are especially depressing and indeed degrading. As Doctor Van Waters says:

Some jails in the southern and southwestern districts are old and unfit; tiers of cells are in partial darkness. The general supervision of inmates is in the hands of trustees. Prisoners are in total idleness with no opportunity for exercise, with space hardly sufficient to move. Meals are eaten in the cells. These jails present a situation of filth and misery impossible to convey.

It seems clear that children who are held in such places are not being subjected to the reformatory influences which consideration for the future security of the community would demand.

Juvenile offenders committed for longer terms are sent to the Federal penitentiaries at Atlanta, Leavenworth, or McNeill Island; to the United States Industrial Reformatory at Chillicothe; to the

National Training School for Boys, the National Training School for Girls, or the Federal Industrial Institution for Women in Alderson, W. Va.; or to some State institution which had contracted with the Bureau of Prisons to receive them. Contracts had been made with 24 such institutions to receive Federal prisoners in 1930. Those most frequently used have been the Idaho State Industrial Training School at St. Anthony, the Washington State Reformatory at Monroe, and the Colorado State Industrial School at Golden. No distinctive treatment can be applied to minors in the penitentiaries. Nor do the institutions for juveniles approximate the ideal of "parental government and family organization." Doctor Van Waters finds that—

The best of the institutions houses the children in large groups, uses basements for living and play rooms, employs disciplinary measures such as silence at meals, marching, formal routine, and flogging; inmates are frequently at the mercy of boy captains; the worst is not to be distinguished from the prison.

Individualization of treatment has not been accomplished. In some instances the child offender is properly clothed, fed, put to school and work, but the need of the spirit for creative outlets, personal guidance, and satisfying human relationships is unfulfilled.

The proper care of child offenders by the Federal Government is made even more difficult by the vast expanse of Federal territory and the great distances which stretch between home and institution. Children are sent, at great cost, to institutions which are located often thousands of miles away from their homes. They are separated from friends and family; forced to adjust themselves to new customs; to a new climate. Their community ties are severed; their normal social development interrupted. The delinquent must be reabsorbed into the life of his home community if he is to be restrained from further wrongdoing. His isolation in an institution located in a distant State renders this necessary readjustment even more difficult of accomplishment.

The Federal Government is not equipped to serve as a guardian to the delinquent child. Nor should it assume this task. Whenever a child has broken a Federal law, his local community has failed in its responsibility to furnish adequate parental guidance. This duty is local, not national. The community has facilities with which to

perform it. The Nation has not. Every child who commits a Federal offense thereupon falls within the category of juvenile delinquency. His case, accordingly, can be handled by State officials under existing State delinquency laws. It is desirable from every point of view that the Federal Government be empowered to withdraw from the prosecution of juveniles, where such withdrawal will be in the public interest, and to leave the treatment of their cases to the juvenile courts or other welfare agencies of their own States. The commission recommends the passage of legislation which will have this effect . . . [pp. 2-5].

23. The First Federal Statute on Juvenile Offenders

"AN ACT TO PROVIDE FOR THE TRANSPORTATION OF CERTAIN JUVENILE OFFENDERS TO STATES UNDER THE LAW OF WHICH THEY HAVE COMMITTED OFFENSES OR ARE DELINQUENT, AND FOR OTHER PURPOSES," 47 UNITED STATES STATUTES AT LARGE 301

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of cooperating with States (and for the purposes of this Act the words "State" and "States" shall include the District of Columbia) in the care and treatment of juvenile offenders, whenever any person under twenty-one years of age shall have been arrested, charged with the commission of any crime punishable in any court of the United States or of the District of Columbia, and, after investigation by the Department of Justice, it shall appear that such person has committed a criminal offense or is a delinquent under the laws of any State that can and will assume jurisdiction over such juvenile and will take him into custody and deal with him according to the laws of such State, and that it will be to the best interest of the United States and of the juvenile offender to surrender the offender to the authorities of such State, the United States attorney of the district in which such person has been arrested is authorized to forego the prosecution of such person and surrender him as herein provided.

It shall be the duty of the United States marshal of such district upon written order of the United States attorney to convey such person to such State or, if already therein, to any other part thereof

and deliver him into the custody of the proper authority or authorities thereof: *Provided*, That before any person is conveyed from one State to another under the authority herein given, such person shall signify his willingness to be so returned, or there shall be presented to the United States attorney a demand from the executive authority of the State to which the prisoner is to be returned, supported by indictment or affidavit as prescribed by section 5278, Revised Statutes (U.S.C., title 18, sec. 662), in cases of demand on State authorities. The expense incident to the transportation, as herein authorized, of any such person shall be paid from the appropriation "Salaries, Fees, and Expenses, United States Marshals." Approved, June 11, 1932.

24. The Administration of the Federal Law of 1932

TWENTY-FIRST ANNUAL REPORT OF THE SECRETARY OF LABOR FOR THE
FISCAL YEAR ENDED JUNE 30, 1933 (WASHINGTON, D.C., 1934)

Federal juvenile offenders.—The [Children's] Bureau has continued throughout the year its cooperation with the Department of Justice in developing a program for more adequate treatment of Federal juvenile offenders. Reports made to the Department of Justice showed that 2,253 juvenile cases were disposed of during the year ended June 30, 1933.

Instead of seeking to develop Federal juvenile courts and Federal probation and institutions for these young people, the Department of Justice and the Children's Bureau are working on the theory that most of the cases involving children can eventually be transferred to the local juvenile courts under the act of Congress approved June 11, 1932 (Pub. No. 169, 72d Cong.).

A plan for prompt reporting to the Department of Justice of all cases of juveniles coming to the attention of Federal authorities throughout the country has been worked out by the Children's Bureau in cooperation with the Department of Justice. A "juvenile index file" has been set up, by means of which current information as to the volume of juvenile cases, the geographical distribution, types of offenses committed, and the methods of treatment, including detention, transfer to other courts, and final disposition, is conveniently available for the planning of such work with the States

as is undertaken by the Children's Bureau in cooperation with the Bureau of Prisons of the Department of Justice.

The first objective in the development of the program has been to acquaint juvenile-court judges and the interested public, as well as Federal judges, attorneys, and probation officers, with the new plans of the Department of Justice. Some of this work was done by the Bureau of Prisons and the Children's Bureau before the passage of the law making possible the transfer of cases and providing funds for the return of child offenders to their home communities. During the past year members of the Children's Bureau staff presented the program to conferences of social work in Florida, Georgia, Illinois, Tennessee, Utah, and Washington, and to the child-welfare committee of the American Legion at its Portland convention.

During the first part of the year a member of the Children's Bureau staff assisted in a survey of the number of juveniles in Federal correctional institutions and in State institutions that were being paid for caring for Federal prisoners.

As the largest number of these cases are filed in the South, most of the time of two members of the Children's Bureau staff was spent in the investigation of local resources for treatment and in bringing together State and Federal officials to work out a program for better care of Federal juvenile offenders in Alabama, Florida, Georgia, Louisiana, South Carolina, and Tennessee. In these States the Federal authorities in each Federal judicial district were visited, and information was obtained as to their policies and their methods of treating juvenile cases. In several districts considerable time was spent with the United States probation officers in working out their juvenile programs.

Brief visits were made to seven other States—California, Indiana, Kentucky, Missouri, Oregon, Utah, and Washington—in connection with which conferences were held with State and Federal officials.

Reports were submitted to the Department of Justice on State institutions for delinquent boys in 9 of the 14 States visited. Carbon copies of reports of all interviews, conferences, and so forth, are filed regularly with the Bureau of Prisons of that Department.

It is clear from the year's experience that the objectives will not be quickly realized. In the States selected for special work the State

resources for care of juvenile delinquents are quite inadequate. Juvenile courts are often such in name only and lack provision for adequate probation service; there are sometimes no detention facilities for juveniles except the county jails, and some of the institutions are planned and operated in accordance with old theories of repression and punishment. Resources for scientific determination of the causes of delinquency and for treatment based on ascertained causes are rarely available. In such States the development of more adequate agencies must precede success in the program of transferring Federal delinquents to the care of the home agencies [pp. 70-72].

25. The Act of 1938 To Provide for the Care and Treatment of Juvenile Delinquents

PUBLIC—NO. 666—75TH CONG., 3D SESS., CHAP. 486, S. 4090

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of this Act a "juvenile" is a person seventeen years of age or under, "juvenile delinquency" is an offense against the laws of the United States committed by a juvenile and not punishable by death or life imprisonment.

SEC. 2. Whenever any juvenile is charged with the commission of any offense against the laws of the United States, other than an offense punishable by death or life imprisonment, and such juvenile is not surrendered to the authorities of any State, pursuant to the provisions of the Act of June 11, 1932 (47 Stat. 301; U. S. C., title 18, sec. 662a), he shall be prosecuted as a juvenile delinquent if the Attorney General in his discretion so directs and the accused consents to such procedure. In such event such person shall be prosecuted by information on the charge of juvenile delinquency, and no prosecution shall be instituted for the specific offense alleged to have been committed by him. The said consent required to be given by such juvenile shall be given by him in writing before a judge of the district court of the United States having cognizance of the offense, who shall fully apprise the juvenile of his rights and of the consequences of such consent.

SEC. 3. The district court of the United States having jurisdiction

of the offense shall have jurisdiction to try persons prosecuted as juvenile delinquents. For such purposes the court may be convened at any time and place within the district, in chambers or otherwise. The trial shall be without a jury. The consent on the part of the juvenile to be prosecuted on a charge of juvenile delinquency shall be deemed a waiver of a trial by jury.

SEC. 4. In the event that the court finds such juvenile guilty of juvenile delinquency, it may place him on probation under the provisions of the Act of March 4, 1925, as amended (43 Stat. 1259; U. S. C., title 18, secs. 724 to 728), except that the period of probation may include but may not exceed the minority of the delinquent; or it may commit the delinquent to the custody of the Attorney General for a period not exceeding his minority, but in no event exceeding the term for which the juvenile could have been sentenced if he had been tried and convicted of the offense which he had committed. The Attorney General may designate any public or private agency for the custody, care, subsistence, education, and training of the juvenile during the period for which he was committed. The cost of such custody and care may be paid from the appropriation for "Support of United States prisoners" or such other appropriation as the Attorney General may designate.

SEC. 5. Whenever a juvenile is arrested on a charge of having committed an offense against the laws of the United States, the arresting officer shall immediately notify the Attorney General of such fact. If such juvenile is not forthwith taken before a committing magistrate, he may be detained in such juvenile home or other suitable place of detention as the Attorney General may designate for such purposes, but shall not be detained in a jail or similar place of detention, unless, in the opinion of the arresting officer, such detention is necessary to secure the custody of such juvenile, or to insure his safety or that of others. In no case shall such detention be for a longer period than is necessary to produce such juvenile before a committing magistrate. The committing magistrate may release such juvenile on bail, upon his own recognizance or that of some responsible person, or in default of bail may commit him to the custody of the United States marshal, who shall lodge him in such juvenile home or other suitable place of detention as the Attorney General may designate for that purpose. Such juvenile shall not be committed to a jail or

other similar institution, unless in the opinion of the marshal it appears that such commitment is necessary to secure the custody of the juvenile or to insure his safety or that of others. A juvenile detained in a jail or similar institution shall be held in custody in a room or other place apart from adults if facilities for such segregation are available.

SEC. 6. The Director of the Bureau of Prisons may contract with public or private agencies for the custody, care, subsistence, education, and training of juvenile delinquents and may defray the cost of such custody, care, subsistence, education, and training from the appropriation for "Support of United States prisoners" or such other appropriation as the Attorney General may designate.

SEC. 7. A juvenile delinquent committed under this Act who has, by his conduct, given sufficient evidence that he has reformed, may be released on parole at any time by the Board of Parole established by the Act of May 13, 1930 (46 Stat. 272, ch. 255; U. S. C., title 18, sec. 723, subsecs. (a)-(c)). If it shall appear to the satisfaction of such Board that there is reasonable probability that such juvenile will, if conditionally released, remain at liberty without violating the law, then the Board may, in its discretion, parole such juvenile under conditions and regulations as the Board may deem proper.

SEC. 8. Nothing in this Act shall be construed to supersede or repeal any provisions of law relative to the custody, care, subsistence, education, or training of juveniles, which are now or may hereafter be made particularly applicable to the District of Columbia.

SEC. 9. This Act may be cited as "The Federal Juvenile Delinquency Act."

Approved, June 16, 1938.

26. Present Methods of Institutional Care for Delinquent Children

ALIDA C. BOWLER AND RUTH S. BLOODGOOD: INSTITUTIONAL TREATMENT OF DELINQUENT BOYS. PART I. TREATMENT PROGRAMS OF FIVE STATE INSTITUTIONS¹ (UNITED STATES CHILDREN'S BUREAU PUBLICATION No. 228 WASHINGTON, D.C., 1935)

Personnel: appointments and removals.—Some variation was found in the provisions relating to appointment and removal of personnel.

¹ The schools selected were: Whittier State School, Whittier, California; Boys' Vocational School, Lansing, Michigan; State Home for Boys, Jamesburg, New Jersey;

In two of these institutions—New York and Ohio—all personnel, including the superintendent, were subject to civil-service regulations; in New York the superintendent was appointed by the director of the State department of social welfare from an eligible list created by civil-service examinations; and in Ohio he was appointed by the State director of public welfare, with the approval of the Governor, from such a civil-service list. In both institutions all other workers were appointed by the superintendent from civil-service eligible lists. It was noted that a heavy proportion of the positions were classed as "noncompetitive," which means that the holders of those positions were subjected to no special tests and the civil-service provision was simply an observance of certain formalities in the matter of application.

Only one school—Michigan—was entirely without any civil-service regulations in the matter of selection of personnel. There the superintendent was appointed by the State corrections commission, and that commission's approval was required for appointments to all other positions at the school. In practice this meant that the superintendent had a free hand in both appointments and removals.

In the California school all positions except those of the superintendent, the assistant superintendent, and the chief placement officer, and in New Jersey all except those of the superintendent and the secretary to the superintendent, were under civil-service regulations as to appointments and removals. In California the superintendent, the assistant superintendent, and the chief placement officer were appointed by the State director of institutions with the consent of the Governor. In New Jersey the two non-civil-service positions were filled through appointment by the local board of managers, subject to the approval of the State board of control. In California all other positions were filled through appointment by the superintendent from a civil-service eligible list if any had been established. In New Jersey the incumbents of all positions except those mentioned were appointed by the local board of managers from civil-service lists. In practice, however, the workers were ac-

Boys' Industrial School, Lancaster, Ohio; and State Agricultural and Industrial School, Industry, New York. These schools were selected because they were "representative of treatment programs being administered in various sections of the country."

tually selected from these lists by the superintendent, whose recommendations the local board almost invariably accepted. A high proportion of the positions there were also rated as noncompetitive.

Opinions differ widely as to the best method for selecting personnel for institutional work. Some superintendents feel that the civil-service law hampers them in obtaining the best-qualified workers and in removing incompetent or unsuitable ones. Others feel that the weeding out accomplished by civil-service examinations is a great help to them and that the protection from political influence afforded by civil-service regulations relating to removal is a beneficial, stabilizing factor.

To anyone who knows the destructive influence of political activity in connection with appointments to positions in public agencies and removals from them, it must be apparent that civil-service principles properly applied make for much greater efficiency in public service. The difficulties seem to be not with civil-service principles but with some prevailing practices. Under civil service the selection of personnel for particular positions, if to render constructive service, cannot be perfunctory. The assembling of the right personnel is one of the most difficult pieces of work in connection with any enterprise. A civil service that establishes proper qualifications to require for each particular job within its classification and that permits no breakdown in the application of those standard qualifications will render incalculable benefits to the public which it is supposed to serve. The kind of job analysis which makes it possible to set up qualifications for appointment by civil service is in itself useful . . . [pp. 225-26].

Critics of the civil-service system who advocate its abolition because of its failure in many instances to operate effectively must face the alternative that without it the institutional personnel may at any time lawfully become the prey of the political-spoils system. The fact that some State administrations do not utilize institutional jobs to pay political debts does not remove the threat. Every new election holds the possibility that qualified, experienced, and competent workers may be removed to make way for friends of a new officialdom . . . [p. 226].

First assignments.—Three of these five institutions used the clini-

cal method in making first assignments to cottage, school, or vocational units. In the other two schools these assignments were made by individual staff members delegated for that purpose by the superintendent when he did not himself make the decisions. At each of the three schools using clinical methods, there was great confidence in the effectiveness of this procedure. Their experience indicated that it was very useful to have the various points of view with respect to an individual case brought together and considered in relation to one another. It was felt that the final plan of treatment evolved for the boys was often more appropriate than would have been the case had the different assignments been made by different individuals without knowledge of the points of view of other staff members and without joint discussions . . . [p. 238].

The industrial or vocational assignments seem to be made on a variety of bases. They depend, of course, upon the fullness or the paucity of the information available relative to the abilities of the individual boy. Usually the boy's own preference is ascertained and some consideration given to it if it seems reasonable in relation to his obvious abilities. In some institutions special vocational tests are given. In others, attempts are being made to devise satisfactory shop try-out systems for new boys. If this can be done in practical fashion, it would seem to be a step forward in the development of the vocational work. Very little evidence was found of any attempt to canvass the community to which the boy was likely to return, to determine what would be the probable work opportunities open to him when he was ready for self-support . . . [p. 239].

STATE HOME FOR BOYS, JAMESBURG, N.J.

Credit system.—At this institution a rather complex credit system was in operation, having been put into effect in 1918 and developed in accordance with experience in its use.

Each cottage master, work supervisor, shop instructor, or school teacher marked a credit card daily for each boy under his supervision. The boys were graded on two things—first, on conduct and effort, second, on accomplishment. The term “conduct and effort” was defined as meaning progress in those qualities, traits, and habits on which satisfactory and wholesome individual happiness and com-

munity life depend. For determining the grade such items as the following were said to be taken into consideration: Whether the boy applies himself to his work, makes good use of his time, works to his maximum ability, respects property rights of others, tells the truth, tries to control his temper, refrains from quarreling or complaining, shows good sportsmanship, and takes pride in being trusted. Rating on accomplishment was based on what the boy actually had achieved in his school or work assignments. Not only the amount of work completed was considered, but also the manner in which it was done. The daily marking was made in terms of "Excellent," "Good," "Fair," or "Poor" . . . [pp. 118-19].

Credits once earned and averaged for the month were never taken away; that is, there was no system of fining. What was taken away for disciplinary reasons was the right to earn the credits, accomplished by class demotion which reduced credit-earning capacity. . . .

At the first reclassification meeting for each boy, the classification committee, after carefully considering his history and his accomplishment since coming to the institution, set a credit goal believed to be appropriate for him. A boy was not eligible for parole until he came near that goal. The average credit goal was 1,440 credits. An average boy could earn that number in about 12 months with determined effort and application. If the classification committee decided that for various reasons inherent in the boy's past life or his personality it was desirable that he be kept a longer period, he was given a higher credit goal—which might be as high as 2,000 or 2,400. . . .

Disciplinary measures.—Staff officers immediately responsible for the supervision of the cottage, the classroom, the shop, or some work group dealt directly with minor misconduct. Instances of major misconduct were referred to the director of cottages and discipline. Usually the supervising officer took the boy to the director's office. The policy tended toward centralizing all responsibility for a boy's conduct in the hands of his cottage father. This was in accordance with the desire to simulate family life and parental control so far as possible. The superintendent of course maintained final authority over the establishment of disciplinary policies, but major respon-

sibility for their administration rested with the director of cottages and discipline [p. 120].

For minor misbehavior, such as persistently making a nuisance of oneself in the cottage, boys were sometimes put "on line" in the cottage living room or on the playground. This meant simply that they could not participate in games and other recreational activities going on. Deprivation of privileges was one of the customary disciplinary measures in use. Since the institution was rich in activities and privileges of all kinds that were greatly coveted by the boys, deprivation was an effective punitive measure. As a few extremely difficult disciplinary problems were inevitable, the segregation cottage had been provided. As has been stated, the boys sent to this cottage lost most of their privileges, earned no credits, did not attend school, and were required to do the hardest and most objectionable work of the institution. They received practically the same food as all other boys except occasionally such items as desserts.

Within the larger segregation group was a smaller unit for offenders who failed again and again to respond to the more constructive treatment. The boys in this disciplinary unit did not go out with the hard-work detail. Instead they were required to spend the entire working-day going through disciplinary routine exercises. This consisted principally of old-style calisthenics for 5 minutes, a rest period for five minutes, and repeat. The monotony of this routine, rather than its difficulty, was said to be what made it effective. The boys were closely watched, and when their attitude seemed to have been sufficiently modified they were transferred to the regular segregation-cottage detail. There was no complete isolation, except of course for the occasional boy who became seriously disturbed mentally [pp. 120-21].

No corporal punishment of any kind was permitted.

Forms of misbehavior considered most serious at this institution were escape or attempt to escape, extreme insolence or insubordination, and persistently committing minor offenses to an extent that seemed to amount to willful defiance of the institution's regulations. Boys who did these things, also boys returned for violation of parole, constituted the types sent to the segregation cottage.

Although smoking was not permitted by the institution and was a matter for discipline, it was not considered a major offense. . . .

The progressive attitude of the staff officer in charge of discipline at this institution can best be shown by quoting his statement in a recent report:

We are inclined to interpret discipline as the development of morale—the establishing of those group and individual controls which made social achievements possible. Its punitive and retributive “virtues” are now entirely discounted. In a democratic society it is far more important for the individual to learn self-control, group responsibility, and social participation than for him to become a subservient, repressed, regimentalized cog in a huge machine. It is thoroughly inconsistent for us therefore to set up any program of training having as its premise mass conformity and turn out a product which is expected to compete adequately in a society which places such a premium on individual initiative and success. . . . Institution custom and tradition have been a most difficult barrier to the universal acceptance of a progressive enlightened form of boy control. It is an obstacle which even after months of effective defeat raises its head to voice objection or warning, when new methods or devices are introduced (*Sixty-eighth Annual Report of the New Jersey State Home for Boys, 1931-32*, pp. 89 and 90) . . . [p. 121].

BOYS' INDUSTRIAL SCHOOL, LANCASTER, OHIO

Credit system.—A boy on entrance was listed for a stay of 12 months. For each month of perfect conduct during his first 2 months he was allowed 5 days off his total “time.” If at the end of these 2 months he had won 5 days for each month, he was given an extra 10 days off, which made a total of 20 days off his institution stay. If at the end of 3 months he still had no misconduct reports, he was given 15 additional days' credit, thus having built up a total of 40 days. Under this system if a boy succeeded in keeping his record absolutely clear of misconduct reports it was possible for him to win his release in 8 months and 20 days. In addition to these automatic ways of obtaining days of credit, boys might be given extra awards for such as the following: 10 days for each promotion in school, for each month of service as monitor, or for winning second place in the monthly military inspection; 15 days for winning first place in monthly military inspection; 5 days for winning third place in the inspection; and 60 days for capturing a runaway . . . [p. 204].

Misconduct reports resulted in the addition of time to be spent at the institution. Records of a boy's status as to "time" still to be "served" were kept in the office of the court officer, and a boy's release was entirely dependent on that record. . . .

Disciplinary measures.—Cottage officers, teachers, trade instructors, and other officers who had boys under their supervision were permitted to place a boy "on line" for minor misconduct. This means that the boy was withdrawn from all the regular activities of his group and had to stand on line wherever he might be, whether in school, shop, or cottage. It was stated that no unusual strained positions were permitted.

When an officer felt that a boy required more severe punishment than being placed on line, he reported the case on a "blue slip" to the court officer. . . . Complete responsibility for the administration of discipline within the limit set by those general policies was vested in the court officer, and every day he held "court." There each case was taken up and discussed with the boy in person. . . .

Discipline meted out by this court took several forms. Time might be added to the period which a boy must complete before he was eligible for parole. This might range all the way from a day or two for minor infractions of rules to the entire year which was regularly added in case of an escape. Boys guilty of sodomy were required to remain 6 months longer. For such offenses as insolence, disobedience, persistent talking on line, fighting, and smoking, varying numbers of days were added.

It was stated that there was no curtailment of food for any offense; that is, no boys were ever limited to a bread-and-water diet. Withdrawal of the privilege of attending the occasional motion-picture show or athletic games was used as a medium of discipline. For more serious cases a discipline cottage was maintained. Boys were sent there by the court officer for specific periods to 30 days. Boys in this cottage attended school but did not do shop work. In lieu of their trade classes they were assigned to do the hardest and most unpleasant manual labor around the institution. They were barred from all games and entertainments. The discipline cottage itself was one of the oldest buildings. It had a living room and dormitory similar to those in other cottages. The living room was quite bare,

stiff, and colorless in atmosphere. No talking was permitted at any time in the living room. . . .

Corporal punishment was administered only on order of the court officer. Individual officers were forbidden to strike any boy or to use any physical force upon him unless the boy became violent and attacked other boys or an officer. The corporal punishment used was known as "paddling." The paddle was a flexible piece of leather shaped like a regular paddle about 6 or 8 inches wide and 12 to 15 inches long, with a stiffened leather handle at one end. The usual number of strokes was 6 to 9, though in extreme cases 12 to 15 might be given. The boy's clothing was not removed for the paddling. Each paddling had to be witnessed by the superintendent, the assistant superintendent, the physician, or the chaplain; and this officer signed the discipline slip as witness. It was stated that boys were paddled only in extreme cases of persistent repetition of offenses, sex offenses, continuous insubordination, or some action regarded as a particularly grave delinquency. Among the latter were sex offenses and escape from the institution—unless they came back of their own volition.

The court often gave an order for paddling and then suspended the order so long as the boy maintained a good conduct record. The court officer believed this procedure had effectively deterred certain types of boys from repetition of offenses, as he found that some of the vainglorious, would-be gangsters were "yellow" when threatened with physical pain . . . [pp. 204-5].

EXISTING LEGAL STATUS AND TREATMENT IN GREAT BRITAIN

27. The British Juvenile Courts under the Children and Young Persons Act, 1933

"PROTECTION OF CHILDREN AND YOUNG PERSONS IN RELATION TO
CRIMINAL AND SUMMARY PROCEEDINGS," 23 GEORGE V, C. 12
PART III (GREAT BRITAIN, STATUTES 1933)

PRINCIPLES TO BE OBSERVED BY ALL COURTS IN DEALING
WITH CHILDREN AND YOUNG PERSONS

44. *General considerations.*—(1) Every court in dealing with a child or young person who is brought before it, either as being in

need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

2) A court shall not order a child under the age of ten years to be sent to an approved school unless for any reason, including the want of a fit person of his own religious persuasion who is willing to undertake the care of him, the court is satisfied that he cannot suitably be dealt with otherwise.

JUVENILE COURTS

45. *Constitution of juvenile courts.*—Courts of summary jurisdiction constituted in accordance with the provisions of the Second Schedule to this Act and sitting for the purpose of hearing any charge against a child or young person or for the purpose of exercising any other jurisdiction conferred on juvenile courts by or under this or any other Act, shall be known as juvenile courts and in whatever place sitting shall be deemed to be petty sessional courts.

46. *Assignment of certain matters to juvenile courts.*—(1) Subject as hereinafter provided, no charge against a child or young person, and no application whereof the hearing is by rules made under this section assigned to juvenile courts, shall be heard by a court of summary jurisdiction which is not a juvenile court:

Provided that—(a) a charge made jointly against a child or young person and a person who has attained the age of seventeen years shall be heard by a court of summary jurisdiction other than a juvenile court; and (b) where a child or young person is charged with an offence, the charge may be heard by a court of summary jurisdiction which is not a juvenile court if a person who has attained the age of seventeen years is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence; and (c) where, in the course of any proceedings before any court of summary jurisdiction other than a juvenile court, it appears that the person to whom the proceedings relate is a child or young person, nothing in this subsection shall be construed as preventing the court,

if it thinks fit so to do, from proceeding with the hearing and determination of those proceedings.

2) No direction, whether contained in this or any other Act, that a charge shall be brought before a juvenile court shall be construed as restricting the powers of any justice or justices to entertain an application for bail or for a remand, and to hear such evidence as may be necessary for that purpose.

3) The Lord Chancellor may by rules assign to juvenile courts the hearing of any applications for orders or licenses relating to children or young persons, being applications cognisable by justices, courts of summary jurisdiction, or petty sessional courts, if, in his opinion, it is desirable in the interests of the children and young persons concerned that such applications should be heard by juvenile courts.

For the purposes of this subsection, any complaint under section forty-four or section forty-five of the Education Act, 1921 (which sections relate to the making of school attendance orders and to the proceedings to be taken where such orders are disobeyed), or under section fifty-four of that Act (which relates to the making of orders requiring defective or epileptic children to be sent to suitable classes or schools) shall be deemed to be an application for an order relating to a child.

47. *Procedure in juvenile courts.*—(1) Juvenile courts shall sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on them by or under this or any other Act.

2) A juvenile court shall, subject as hereinafter provided, sit either in a different building or room from that in which sittings of courts other than juvenile courts are held, or on different days from those on which sittings of such other courts are held; and no person shall be present at any sitting of a juvenile court except—(a) members and officers of the court; (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case; (c) bona fide representatives of newspapers or news agencies; (d) such other persons as the court may specially authorise to be present: Provided that juvenile courts for the City of London shall sit at such place or places as the Court

of the Lord Mayor and Aldermen of the City may from time to time determine.

3) The Lord Chancellor may make rules for regulating the procedure in juvenile courts, and such of the provisions of the Summary Jurisdiction Acts and of the Acts relating to indictable offences as regulate procedure shall have effect subject to any rules so made.

48. *Miscellaneous provisions as to powers of juvenile courts.*—(1) A juvenile court sitting for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child or young person may, if it thinks fit to do so, proceed with the hearing and determination of the charge or application, notwithstanding that it is discovered that the person in question is not a child or young person.

2) Where the court before which any person is bound by his recognisance under the Probation of Offenders Act, 1907, to appear is a juvenile court, the attainment by him of the age of seventeen years shall not deprive that court of jurisdiction to enforce his attendance and deal with him in respect of any failure to observe the conditions of his recognisance or of jurisdiction to vary or discharge the recognisance.

3) [Provides for extension of remands or to deal finally with the child.]

4) [Provides juvenile court may sit on any day for hearing a charge against a child or young person for an indictable offence.]

5) A juvenile court sitting in the metropolitan police court area shall have all the powers of a metropolitan police magistrate; and for the purposes of any enactment by virtue of which any powers are exercisable—(a) by a court of summary jurisdiction acting for the same petty sessional division or place as a juvenile court by which some previous act has been done; or (b) by a juvenile court acting for the same petty sessional division or place as a court of summary jurisdiction by which some previous act has been done, the metropolitan police court area shall be deemed to be the place for which all metropolitan police magistrates sitting in that area and all juvenile courts sitting in that area act.

6) [Relates especially to the court in the City of London.]

49. *Restrictions on newspaper reports of proceedings in juvenile courts.*—(1) Subject as hereinafter provided, no newspaper report of any proceedings in a juvenile court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein, nor shall any picture be published in any newspaper as being or including a picture of any child or young person so concerned in any such proceedings as aforesaid:

Provided that the court or the Secretary of State may in any case, if satisfied that it is in the interests of justice so to do, by order dispense with the requirements of this section to such extent as may be specified in the order.

2) Any person who publishes any matter in contravention of this section shall on summary conviction be liable in respect of each offence to a fine not exceeding fifty pounds.

JUVENILE OFFENDERS

50. *Age of criminal responsibility.*—It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence.

51. *Removal of disqualifications attaching to felony.*—No conviction or finding of guilty of a child or young person shall be regarded as a conviction of felony for the purposes of any disqualification attaching to felony.

52. *Restrictions on punishment of children and young persons.*—

1) A child shall not be ordered to be imprisoned or be sent to penal servitude for any offence, or be committed to prison in default of payment of a fine, damages, or costs.

2) A young person shall not be sent to penal servitude for any offence.

3) A young person shall not be ordered to be imprisoned for an offence, or be committed to prison in default of payment of a fine, damages, or costs, unless the court certifies that he is of so unruly a character that he cannot be detained in a remand home or that

he is of so depraved a character that he is not a fit person to be so detained.

53. *Punishment of certain grave crimes.*—(1) Sentence of death shall not be pronounced on or recorded against a person under the age of eighteen years, but in lieu thereof the court shall sentence him to be detained during His Majesty's pleasure, and, if so sentenced, he shall, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and under such conditions as the Secretary of State may direct.

2) Where a child or young person is convicted on indictment of an attempt to murder, or of manslaughter, or of wounding with intent to do grievous bodily harm, and the court is of opinion that none of the other methods in which the case may legally be dealt with is suitable, the court may sentence the offender to be detained for such period as may be specified in the sentence; and where such a sentence has been passed the child or young person shall, during that period, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and on such conditions as the Secretary of State may direct.

3) [Provides for detention and legal custody.]

4) [Discharge of person detained.]

54. *Substitution of custody in remand home for imprisonment.*—Where a child or young person is found guilty of an offence punishable in the case of an adult with penal servitude or imprisonment, or where a child or young person would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages, or costs, the court may, if it considers that none of the other methods in which the case may legally be dealt with is suitable, order that he be committed to custody in a remand home named in the order for such term as may be specified in the order, not exceeding the term for which he might, but for this Act, be ordered to be imprisoned or committed to prison, nor in any case exceeding one month.

55. *Power to order parent to pay fine, &c., instead of a child or young person.*—(1) Where a child or young person is charged with any offence for the commission of which a fine, damages, or costs may be imposed, if the court is of opinion that the case would be best met by the imposition of a fine, damages, or costs, whether

with or without any other punishment, the court may in any case, and shall if the offender is a child, order that the fine, damages, or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conducted to the commission of the offence by neglecting to exercise due care of the child or young person.

2) In the case of a child or young person charged with any offence, the court may order his parent or guardian to give security for his good behaviour.

3) [Court authorized to require parent to give security for good behavior of the child.]

4) [Order against parent for failure to attend when required.]

5) [Provides for appeal by parent or guardian against orders under certain conditions.]

56. *Power of other courts to remit juvenile offenders to juvenile courts.*—(1) Any court by or before which a child or young person is found guilty of an offence other than homicide, may, if it thinks fit, remit the case to a juvenile court acting for the place where the offender was committed for trial, or, if he was not committed for trial, to a juvenile court acting either for the same place as the remitting court or for the place where the offender resides; and, where any such case is so remitted, the offender shall be brought before a juvenile court, accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court.

2) [Relates to right of appeal.]

3) [Directions given as to custody of offender or his release on bail by a court remitting a case to the juvenile court.]

57. *Power to send juvenile offenders to approved schools or to commit them to fit persons.*—(1) Any court by or before which a child or young person is found guilty of an offence punishable in the case of an adult with imprisonment shall, in addition to any other powers exercisable by virtue of this or any other Act, have power—(a) to order him to be sent to an approved school; (b) to commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care of him.

2) Where an order is made under this section committing a child or young person to the care of a fit person, a probation order may also be made under the Probation of Offenders Act, 1907.

58. *Power of Secretary of State to send certain juvenile offenders to approved schools.*—The Secretary of State may by order direct that—(a) a person who is under the age of eighteen years and is undergoing detention in a Borstal institution; or (b) a child or young person with respect to whom he is authorised to give directions under subsection (2) of section fifty-three of this Act; or (c) a young person who has been ordered to be imprisoned and has been pardoned by His Majesty on condition of his agreeing to undergo training in a school, shall be transferred or sent to and detained in an approved school specified in the order; and any such order shall be an authority for the detention of the person to whom it relates until such date as may be specified in the order. . . .

59. *Miscellaneous provisions as to summary proceedings against juvenile offenders.*—(1) The words “conviction” and “sentence” shall cease to be used in relation to children and young persons dealt with summarily. . . .

(2) Where a child or young person is himself ordered by a court of summary jurisdiction to pay costs in addition to a fine, the amount of the costs so ordered to be paid shall in no case exceed the amount of the fine.

60. *Amendments of certain enactments relating to criminal proceedings and courts of summary jurisdiction.*— . . .

CHILDREN AND YOUNG PERSONS IN NEED OF CARE OR PROTECTION

61. *Definition of “in need of care or protection.”*—(1) For the purposes of this Act a child or young person in need of care or protection means a person who is—(a) a child or young person who, having no parent or guardian or a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardianship, is either falling into bad associations, or exposed to moral danger, or beyond control; or (b) a child or young person who—(i) being a person in respect of whom any of the offences mentioned in the First Schedule to this Act has been committed; or (ii) being a

member of the same household as a child or young person in respect of whom such an offence has been committed; or (iii) being a member of the same household as a person who has been convicted of such an offence in respect of a child or young person; or (iv) being a female member of a household whereof a member has committed an offence under the Punishment of Incest Act, 1908, in respect of another female member of that household; requires care or protection; or (c) a child in respect of whom an offence has been committed under section ten of this Act (which relates to the punishment of vagrants preventing children from receiving education).

2) For the purposes of this section, the fact that a child or young person is found destitute, or is found wandering without any settled place of abode and without visible means of subsistence, or is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing or offering anything for sale), or is found loitering for the purpose of so begging or receiving alms, shall (without prejudice to the generality of the provisions of paragraph (a) of the last foregoing subsection) be evidence that he is exposed to moral danger.

62. *Powers of juvenile courts in respect of children and young persons in need.*—(1) If a juvenile court is satisfied that any person brought before the court under this section by a local authority, constable, or authorised person, is a child or young person in need of care or protection, the court may either—(a) order him to be sent to an approved school; or (b) commit him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him; or (c) order his parent or guardian to enter into a recognisance to exercise proper care and guardianship; or (d) without making any other order, or in addition to making an order under either of the last two foregoing paragraphs, make an order placing him for a specified period, not exceeding three years, under the supervision of a probation officer, or of some other person appointed for the purpose by the court.

2) Any local authority, constable or authorised person having reasonable grounds for believing that a child or young person is in need of care or protection may bring him before a juvenile court; and it shall be the duty of a local authority to bring before a juve-

nile court any child or young person residing or found in their district who appears to them to be in need of care or protection unless they are satisfied that the taking of proceedings is undesirable in his interests, or that proceedings are about to be taken by some other person.

3) [Relates to Summary Jurisdiction Acts and recognisances.]

4) ["Authorized person" means officer of a society authorized by the Secretary of State to institute proceedings under this section.]

63. *Powers of other courts with respect to last foregoing section.*

(1) Any court by or before which a person is convicted of having committed in respect of a child or young person any of the offences mentioned in the First Schedule to this Act or any offence under section ten of this Act, may—(a) direct that the child or young person be brought before a juvenile court with a view to that court making such order under the last foregoing section as may be proper; or (b) if satisfied that the material before the court is sufficient to enable it properly to exercise jurisdiction, may make any order which the juvenile court might make.

2) [Declares it the duty of the local authority to bring the child before the court.]

REFRACTORY CHILDREN AND YOUNG PERSONS

64. *Power of parent or guardian to bring child or young person before juvenile court.*—Where the parent or guardian of a child or young person proves to a juvenile court that he is unable to control the child or young person, the court, if satisfied—(a) that it is expedient so to deal with the child or young person; and (b) that the parent or guardian understands the results which will follow from and consents to the making of the order, may order the child or young person to be sent to an approved school, or may order him to be placed for a specified period, not exceeding three years, under the supervision of a probation officer or of some other person appointed for the purpose by the court: Provided that an order that the child or young person be sent to an approved school shall not be made unless the local authority within whose area he is resident agree.

65. *Power of the poor law authority to bring child or young person before juvenile court.*—Where a poor law authority satisfy a juvenile court that any child or young person maintained in or boarded out from a school or other institution belonging to the authority is refractory, and that it is expedient that he should be sent to an approved school, the court may order him to be sent to such a school.

SUPPLEMENTAL

66. *Supervision by probation officers or other persons.*—(1) Where a court makes an order under any of the foregoing provisions of this Part of this Act placing a child or young person under the supervision of a probation officer or of some other person, that officer or person shall, while the order remains in force, visit, advise and befriend him and, when necessary, endeavour to find him suitable employment and may, if it appears necessary in his interests so to do, at any time while the order remains in force and he is under the age of seventeen years, bring him before a juvenile court, and that court may, if it thinks that it is desirable in his interests so to do, order him to be sent to an approved school or commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care of him.

2) Where the probation officer or other person named in an order as aforesaid placing a child or young person under supervision has died or is unable for any reason to carry out his duties, or where it is made to appear that it is for any reason desirable that another person shall be appointed in the place of that officer or person, a juvenile court may appoint another probation officer or person to act in his place.

3) [Defines a probation order for the purposes of the Criminal Justice Act, 1925, relating to salaries and remunerations.]

67. *Removal or remand of child or young person to place of safety.*—[Provides for removal of child to a place of safety and temporary order for detention in a safe place.]

68. *Regard to be had to religious persuasion of person sent to approved school.*—(1) A court before making an approved school order with respect to any child or young person shall endeavour to ascertain his religious persuasion.

2) A court, or the Secretary of State, in determining the approved school to which a person is to be sent shall, where practicable, select a school for persons of the religious persuasion to which he belongs.

3) Where an order has been made sending a person to an approved school which is not a school for persons of the religious persuasion to which he belongs, his parent, guardian or nearest adult relative may apply—(a) if the order was made by a court of summary jurisdiction, to a juvenile court acting for the same petty sessional division or place; and (b) in any other case, to the Secretary of State, to remove or send the person to an approved school for persons of his religious persuasion, and the court or Secretary of State shall, on proof of his religious persuasion and notwithstanding any declaration with respect thereto embodied in the approved school order, if any, relating to him, comply with the request of the applicant:

Provided that nothing in this subsection shall empower a court, or impose an obligation upon the Secretary of State, to comply with any such request as aforesaid unless the applicant has—(i) made his application before, or within thirty days after, the person's arrival at the school; and (ii) named a school for persons of the religious persuasion in question and shown to the satisfaction of the court or Secretary of State that the managers thereof have accommodation available.

69. *Coming into force of approved school orders.*—[Provides that orders are to take effect immediately but may be postponed pending completion of arrangements for sending child to suitable institution or on account of poor health.]

70. *Contents of approved school orders.*—[Gives in considerable detail the contents of approved school orders issued by the court.]

71. *Duration of approved school orders.*—(1) Where a court orders a child to be sent to an approved school, the order shall be an authority for his detention in an approved school until the expiration of a period of three years from the date of the order and, if at the expiration of that period he is under the age of fifteen years, for his further detention until he attains that age.

2) Where a court orders a young person to be sent to an approved school, the order shall be an authority for his detention in an approved school—(a) if at the date of the order he has not attained

the age of sixteen years, until the expiration of a period of three years from the date of the order; and (b) if at the date of the order he has attained the age of sixteen years, until he attains the age of nineteen years.

72. *Conveyance of children or young persons to approved school.*—[The court which issues an approved school order must see that it is delivered to the authority responsible for conveying the child or young person to the school. The order shall contain such information concerning the child or young person "as is in the opinion of the court material to be known by the managers of the school." A penalty is to be imposed upon anyone who interferes with the carrying out of the commitment order.]

73. *Extension of period of detention in approved schools.*—If the managers of an approved school are satisfied that a person whose period of detention therein is, under the foregoing provisions of this Act, about to expire needs further care or training and cannot without it be placed in suitable employment they may, if the Secretary of State consents, detain him for a further period not exceeding six months, so, however, that he is not detained beyond the date on which he will attain the age of nineteen years:

74. *Supervision and recall after expiration of order.*—(1) A person sent to an approved school shall after the expiration of the period of his detention be under the supervision of the managers of his school—(a) if at the expiration of that period he has not attained the age of fifteen years, until he attains the age of eighteen years; (b) if he has at the expiration of that period attained the age of fifteen years, for a period of three years or until he attains the age of twenty-one years, whichever may be the shorter period.

2) The managers may, and, if the Secretary of State so directs, shall, by notice in writing recall to the school any person under their supervision who is at the date of the recall under the age of nineteen years:

Provided that a person shall not be so recalled, unless in the opinion of the managers, or, as the case may be, of the Secretary of the State, it is necessary in his interests to recall him.

3) A person who has been so recalled shall be released as soon as the managers think that he can properly be released, and in no

case shall he be detained—(a) after the expiration of a period of three months, or of such longer period not exceeding six months as the Secretary of State may, after considering the circumstances of his case, direct; or (b) after attaining the age of nineteen years.

4) The managers shall forthwith notify the Secretary of State of the recall of any person and shall state the reasons for his recall, and when the managers release any person so recalled they shall forthwith notify the Secretary of State that they have done so.

5) For the purposes of this Act a person who is out under supervision from an approved school shall be deemed to be under the care of the managers of the school.

75. *Provisions as to making, duration, and effect, of orders of committal to fit persons.*—(1) Before making an order under this Act committing a child or young person to the care of a fit person, the court shall endeavour to ascertain the religious persuasion of the child or young person, and in selecting the person to whose care the child or young person is to be committed the court shall if possible select a person who is of the same religious persuasion as the child or young person or who gives an undertaking that he will be brought up in accordance with that religious persuasion.

2) [Order committing a child or young person must contain his age and religious persuasion.]

3) [Order of commitment remains in force until the child or young person attains the age of eighteen.]

4) The person to whose care a child or young person is committed by any such order as aforesaid shall, while the order is in force, have the same rights and powers and be subject to the same liabilities in respect of his maintenance as if he were his parent, and the person so committed shall continue in his care notwithstanding any claim by a parent or any other person.

76. *Committal to local and other authorities as "fit persons."*—The local authority shall for the purposes of the provisions of this Act relating to the making of orders committing children and young persons to the care of fit persons be deemed to be a fit person and accordingly orders may be made committing children and young persons to their care and they may undertake the care of children and young persons so committed.

2) [Provides for the commitment to the Minister of Pensions of any child or young person for whom it is his duty to provide under the War Pensions Act.]

28. The Secretary of State on Provisions of the Juvenile Court Act of 1933

CIRCULAR (665,560/2, 9TH AUGUST, 1933) ISSUED TO THE JUSTICES
BY THE UNDER SECRETARY OF STATE, HOME OFFICE, RE THE
[BRITISH] CHILDREN AND YOUNG PERSONS ACT, 1933

It must be borne in mind that the juvenile court is not solely or primarily a criminal court. It is equally a civil court. It hears applications for adoption orders, and under the new Act the number of applications in respect of children and young persons requiring care or protection is likely to increase. . . .

In order to avoid the risk of duplication of work the Secretary of State would suggest that the Justices should discuss with the local authority in their area the best way of allotting between the probation officers and the officers of the local authority the various duties connected with these investigations. The local education authority are clearly in the best position to supply the information about the character and medical history of a child during his school career and where the officers of the authority visit the homes of the children for purposes of school attendance they may be able in many cases to furnish information about home surroundings. But the juvenile court is concerned with young persons up to the age of seventeen who have left school and in regard to these it will often be necessary to supplement any information the local authority can give as to their school career. It must be remembered, moreover, that if a child or young person is likely to be put under the supervision of the probation officer, it is necessary that the probation officer should be able to advise the court on first-hand information whether the case is one which is likely to prove suitable for probation and for this purpose he ought to have personal knowledge of the home conditions and to get into touch with the parents. The Secretary of State thinks that if these considerations are borne in mind it will be possible for the Justices to make arrangements in

close consultation with the local authority which will secure the desired object without unnecessary labour or overlapping. . . .

The new Act modifies and in some directions extends the methods available for dealing with children and young persons. Broadly speaking, whether the child or young person is an offender or is brought before the court as needing care or protection, the methods of dealing with him are similar. It is not proposed to recapitulate **here all the available methods.**

For some offences, fining may be the appropriate form of treatment and this is retained (section 60 and Third Schedule which replaces section 10 of the Summary Jurisdiction Act, 1879). In other cases a salutary effect may be produced on a boy or girl if he or she is ordered to pay for the replacement of an article damaged or stolen. Section 55 reproduces the useful provision by which the court can order a fine, damages, or costs, to be paid by the parent or guardian instead of by the child or young person. The power to order a child to be whipped is also retained though the practice of the most experienced juvenile courts for many years shows that these Courts rarely or never need to exercise the power. . . .

The forms of treatment most generally used by the juvenile courts are supervision in the open (probation) and residential treatment (Home Office schools) and to these the new Act adds an extension of the system of boarding out by means of committal to the care of the local authority as a fit person . . . [pp. 6-10].

29. Places of Detention in Great Britain

CIRCULAR 657,004 (1, 10TH JANUARY, 1931) ISSUED TO THE JUSTICES
BY THE UNDER SECRETARY OF STATE, HOME OFFICE, RE THE
[BRITISH] CHILDREN AND YOUNG PERSONS ACT, 1932

Before 1928 children and young persons under sixteen who were charged before the Courts with offences and were remanded in custody could only be sent to prison. By the Children Act of that year a substitute for prison was devised by the provision of places of detention. These places of detention were to serve a two-fold purpose, *viz.* to provide for the custody of children and young persons under sixteen remanded or committed for trial but not released

on bail (section 97), (b) to provide for the detention of children and young persons in a place of detention, for a period not exceeding one month, as a substitute for a sentence of imprisonment. . . . The responsibility of providing places of detention for every petty sessional division was placed by the Children Act, 1908, on the police authority, except in the Metropolitan Police District, where the responsibility was placed, as respects London, on the London County Council. . . .

It appears that in 1931 about 2,061 boys and 256 girls were so remanded. The return indicates that about 240 different places are used or reserved for use in case of need as places of detention and these may be classified as follows

Provided remand homes	29
Police stations	20
Public assistance institutions	101
Voluntary homes—mainly for girls	5
Probation officers' houses	11
Police officers' houses	16
Private houses	13

In many of these cases the accommodation is rarely, if ever, used. This is notably the case with public assistance institutions, the number of which included in the return is high. Both the Ministry of Health and the Home Office deprecate the use of public assistance institutions for this purpose, and they earnestly hope that in future the use of such accommodation may be avoided as far as practicable. . . .

The Children and Young Persons Act, 1932, makes several changes in the system under which these existing arrangements have been made. The most important change is that the duty of providing remand accommodation for children and young persons is now transferred from the police authority to the councils of counties and county boroughs (section 28). This change was recommended by the Young Offenders Committee "to promote the greater co-operation which should exist between the local education authority and the Juvenile Court" [pp. 2-3].

30. A Home Office "White Paper" Describes the Approved School

CLASSIFIED LIST OF SCHOOLS APPROVED BY THE
SECRETARY OF STATE¹

HOME OFFICE SCHOOLS

Introductory.—Home Office Schools, or "approved schools" as they are termed in the Children and Young Persons Act, 1933, are intended for the education and training of children and young persons under seventeen sent to them by the Courts for that purpose in pursuance of the provisions of the Act. The names "reformatory" and "industrial" which have long been obsolete have disappeared but the provisions of the Act apply in relation to existing reformatory or industrial schools as if the certificate for the school were a certificate of approval (Fifth Schedule, paragraph 6) [p. 1].

Grounds of admission.—Under the provisions of the Children and Young Persons Act, 1933, approved schools, as classified by the Secretary of State in the manner described later, receive both young offenders and those children and young persons who need care and protection. The illogical discrimination between the treatment of the neglected and the delinquent has given way to the principle of dealing with the boy or girl according to his or her needs. This is made explicit in section 44 of the Act by the declaration that "every Court in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training."

The following classes of children and young persons under seventeen may be sent by Courts to approved schools:—

1) Any child or young person who is found guilty of an offence punishable in the case of an adult with imprisonment (section 57 (1)). It may be pointed out that in these cases there is no *conviction* and no *sentence* (section 59 (1)).

2) Any child or young person who is "in need of care or protec-

¹ [A nine-page "White paper" issued apparently in 1934.—EDITOR.]

tion." Section 61 of the Act, which defines the meaning of this phrase, reads as follows:—

- i) For the purposes of this Act a child or young person in need of care or protection means a person who is—
 - a) a child or young person who, having no parent or guardian or a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardianship, is either falling into bad associations, or exposed to moral danger, or beyond control; or
 - b) a child or young person who—
 - (i) being a person in respect of whom any of the offences mentioned in the First Schedule to this Act has been committed; or
 - (ii) being a member of the same household as a child or young person in respect of whom such an offence has been committed; or
 - (iii) being a member of the same household as a person who has been convicted of such an offence in respect of a child or young person; or
 - (iv) being a female member of a household whereof a member has committed an offence under the Punishment of Incest Act, 1908, in respect of another female member of that household;
requires care or protection; or
 - c) a child in respect of whom an offence has been committed under section 10 of this Act (which relates to the punishment of vagrants preventing children from receiving education).
- ii) For the purposes of this section, the fact that a child or young person is found destitute, or is found wandering without any settled place of abode and without visible means of subsistence, or is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing or offering anything for sale) or is found loitering for the purpose of so begging or receiving alms, shall (without prejudice to the generality of the provisions of paragraph (a) of the

last foregoing subsection) be evidence that he is exposed to moral danger.

3) Any child or young person who is beyond control may be so sent on the application of his parent or guardian. If the Court prefers, the child or young person may first be placed under supervision and if that fails, training in an approved school may be ordered subsequently (sections 64 and 66).

4) Any child or young person who is maintained in or boarded out from a school or other institution belonging to a public assistance authority, on the application of that authority (section 65).

5) Any child in respect of whom the school attendance order is not complied with, on the application of the local education authority (Third Schedule which amends section 45 of the Education Act, 1921).

Approved schools are not intended, generally speaking, for the reception of children under ten who should as far as practicable be boarded-out, but an exception is made in respect of any child who cannot for any reason, including the want of a fit person of his own religious persuasion who is willing to undertake the care of him, be suitably dealt with otherwise (section 44 (2)).

Mental defectives. Approved schools are not suitable for the reception of defective children or young persons. Under section 62 (2) of the Children Act, 1908 (which is now repealed) a few special industrial schools were certified for the reception of youthful offenders or children suffering from mental defect, but experience has shown that the needs of defective children are more suitably met either by the facilities since afforded by the Mental Deficiency Acts or, as regards school children who, while not certifiable under the Mental Deficiency Acts, are incapable of receiving proper benefit from the instruction given in the ordinary public elementary schools, by Part V of the Education Act, 1921. Where a child or young person is brought before a Court for an offence or other reason and is found to be defective (and not merely backward), it is far better that he should receive the treatment which his defectiveness requires than that he should be dealt with by the methods designed for the treatment of normal or merely backward children . . . [pp. 2-4].

Classification.—The classification adopted is mainly based on the following age groups: Boys' schools:—(a) junior for boys under 13; (b) intermediate— for boys of 13 and under 15; (c) senior for boys of 15 and under 17.

Girls' schools: (a) junior—for girls under 15; (b) senior for girls of 15 and under 17.

It will be found on examination of the list appended to this memorandum that in most parts of the country there is a boys' school for each age group and it is not necessary to send a boy a long way from his home. This may not always be possible in the case of Roman Catholic boys as most of the Roman Catholic Schools are in the North of England.

The number of schools for girls is necessarily smaller and it may be impossible in some cases to avoid sending the older girls some distance from their homes, but as the Approved School Rules, 1933, provide that home leave shall be granted each year unless circumstances make it undesirable, boys and girls will thus be enabled to remain in touch with their homes.

Special provision in three schools in or near London is made for Jewish boys and girls . . . [p. 5].

Number and management. There are 71 approved schools on the list, classified as follows: boys' junior schools 22, intermediate 13, senior 15; girls' junior schools 16, senior 5.

The majority of the schools (55) are under voluntary management. The remainder (16) are provided by local authorities.

The number of children and young persons sent by the Court who are now in the schools is 6,686 of whom 5,322 are boys and 1,364 girls.

Many of the schools also receive boys and girls who are not sent to them by the Courts.

Cost. The cost of maintaining children sent to approved schools by the Courts is borne in equal proportions by the Exchequer and by local authorities. . . . [pp. 5-6].

Choice of school. When it has been decided to send a boy or girl to an approved school, the selection of the particular school rests with the Court. . . . The selection will, of course, be limited according to the age of the child (section 66(1)), having regard to the age classification of the schools, and to religious persuasion (section 68),

but the Court may also wish to consider the distance of the school from the home and the particular type of training given. Some information on the latter point is given for the guidance of Courts and local authorities in the classified list.

No approved school can refuse to receive a boy or girl except on the grounds stated in section 81(2), namely, that the school is not of the religious persuasion to which the boy or girl belongs; that the school is provided by a local authority or local authorities who are not liable to make contribution in respect of the boy or girl; or that the school is full . . . [p. 6].

Education and training.—Paramount importance is attached in all approved schools to the moulding of character, because it is realised that most of the boys and girls who are sent to the schools have been handicapped by a bad environment.

No restraint is placed on the freedom of the pupils beyond what is required by the discipline of any good school. Every attempt is made to encourage habits of self-reliance so that the boys and girls may be prepared for the difficulties which may meet them when they leave the school.

In the junior schools the education follows the lines of that given in the public elementary schools. Full-time schoolroom education is associated with manual work in wood or metal. Many of the schools have farms or gardens where part of the education can be given in the open air.

In the schools for older boys or girls a definite vocational training is given as soon as school age is passed, though, when boys and girls are backward, schoolroom education is continued until a reasonable standard is reached . . . [pp. 7-8].

Supervision.—A good system of after-care is an important feature of the school system, because conduct during the first two or three years after the boy or girl leaves the school is the test of the success of the training. Unless help and guidance are given during these years the whole training may prove a failure. . . . To give them the necessary control, the Act provides that every person who leaves an approved school remains after the expiration of the period of detention under the supervision of the managers (a) if he is not fifteen, until he is eighteen, or (b) if he is over fifteen, for a period

of three years or until he attains the age of twenty-one, whichever may be the shorter period (section 74(1)).

The managers are given power to recall any person under supervision, if it is necessary in his own interests, so long as he is under nineteen.

Boys and girls who cannot properly be sent to their homes are placed in suitable lodgings or hostels. Supervision is exercised directly by the headmaster and his staff, but when the boy or girl is placed out at any distance from the school, the schools are expected to find them a local friend, who may be the probation officer or some other suitable person, to help them if need arises.

Inspection and reports.—The schools are under regular inspection by the Inspectors of the Children's Branch of the Home Office. The managers of the schools are always willing on request to provide reports on the progress of any boys or girls who may have been sent to their care . . . [p. 9].

31. Approved Schools in Great Britain

APPROVED SCHOOL RULES, 1933, DATED JULY 28, 1933, MADE BY THE SECRETARY OF STATE, FOR THE MANAGEMENT AND DISCIPLINE OF APPROVED SCHOOLS UNDER PARAGRAPH 1 OF THE FOURTH SCHEDULE OF THE CHILDREN AND YOUNG PERSONS ACT, 1933 (23 & 24 GEORGE V, C. 12) (S.R. & O. 1933 No. 774)¹

1) These Rules may be cited as The Approved School Rules, 1933.

2) These Rules shall come into operation on the first day of November, 1933.

3) In these Rules the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“the Act” means the Children and Young Persons Act, 1933.

“School” means a school approved by the Secretary of State under section 79 of the Children and Young Persons Act, 1933.

“Managers” in relation to an approved school established or taken over by a local authority or by a joint committee representing two or more local authorities means that local authority or the

¹ [Conveniently found in W. Clarke Hall and A. C. L. Morrison, *The Law Relating to Children and Young Persons* (London: Butterworth & Co., 1934), Appen. I, pp. 173-82. —EDITOR.]

joint committee, as the case may be, and in relation to any other approved school means the persons for the time being having the management or control thereof.

"Local authority school" means an approved school established or taken over by a local authority or by a joint committee representing two or more local authorities.

"Chief Inspector" means the Chief Inspector appointed by the Secretary of State under section 103 of the Children and Young Persons Act, 1933, for the purposes of the enactments relating to children and young persons. . . .

Accommodation.—(13) The total number of boys resident in a school at any time, whether sent under the provisions of the Act or not, shall not exceed such number as may be fixed for that school from time to time by the Secretary of State.

Except with the special authority of the Secretary of State the Managers shall not receive or retain in the school any boy whose age is outside the limits fixed by the Secretary of State in pursuance of section 81 of the Act for the class of school to which the school belongs.

Appointment of staff.—(14) The Managers shall be responsible for the appointment, suspension or dismissal of the staff, but the appointment of the Headmaster shall not be made without the approval of the Secretary of State, and no principal teacher shall be appointed unless he is a certificated teacher or in exceptional cases possesses such qualifications as may be approved by the Secretary of State. . . .

Care of boys.—(23) Each boy shall be provided with a separate bed and shall be kept supplied with suitable clothing similar to that worn in ordinary life.

24) The boys shall be supplied with sufficient and varied food based on a dietary scale to be drawn up by the Managers after consultation with the Headmaster and Medical Officer. The dietary scale shall include a list of dishes and a table of quantities to be supplied to each boy.

The dietary scale shall be subject to the approval of the Chief Inspector and, subject to the provisions of Rule 34 (ii), no sub-

stantial alteration shall be made in it without his approval. A copy shall be kept posted in the school kitchen.

School routine.—(25) The Daily Routine of the school (including the hours of rising, school room instruction and practical training, domestic work, meals, recreation and retiring) shall be in accordance with a scheme approved from time to time by the Chief Inspector.

A copy of the Daily Routine shall be kept posted in some conspicuous place in the school.

Any substantial deviation from the Daily Routine shall be entered in the Log Book and a notification shall be sent forthwith to the Chief Inspector.

Education.—(26) The education given in the school shall be based on the principles of the Education Act, 1921,¹ so as to secure adequate elementary education for boys of school age and their continued education thereafter so long as they remain in the school.

The schoolroom time-table and syllabus shall be subject to approval by the Chief Inspector. A copy of the time-table shall be kept posted in the schoolroom.

The practical training of all boys shall be in accordance with a scheme approved from time to time by the Chief Inspector. Any substantial deviation from the scheme shall be entered in the Log Book and a notification shall be sent forthwith to the Chief Inspector.

The attendance of boys in the schoolroom and at all classes of practical training shall be recorded in registers which shall be marked in accordance with the regulations of the Board of Education.

27) The practical training given to boys over school age shall, so far as practicable, be directed to their preparation for a particular form of employment. Regard shall be had to the capacity and preference of each boy and in all suitable cases the parent or guardian shall be consulted.

Employment.—(28) No boy shall be employed in such a way as to impair his capacity for profiting by instruction or to deprive him of reasonable recreation and leisure. Boys under twelve shall not be employed except in light work such as making their own beds or cleaning their own boots.

¹ 11-2 Geo. V, c. 51.

Recreation, visits and letters.—(30)—(i) Adequate provision shall be made for free time and recreation, including organised games and walks and visits outside the school boundaries. Except in bad weather at least an hour daily shall be spent in the open air.

ii) So far as reasonably possible, a holiday away from the school shall be arranged annually.

iii) Home leave shall be granted to each boy each year unless circumstances make it undesirable, but the period of home leave shall not exceed sixteen days in any year without the permission of the Chief Inspector.

31) Boys shall be encouraged to write to their parents at least once a month and for this purpose postage stamps shall be provided, if necessary, by the Managers.

Boys shall be allowed to receive letters from their parents, relatives and friends and, at such reasonable intervals as the Managers may determine, visits from them.

The Headmaster may suspend any of these facilities if he is satisfied that they interfere with the discipline of the school. Any such suspension shall be recorded in the Log Book.

32) Arrangements shall be made for the giving of pocket-money each week subject to such conditions as may be approved by the Chief Inspector. . . .

Discipline and punishment.—(33) The discipline of the school shall be maintained by the personal influence of the Headmaster and staff and shall be promoted by a system of rewards and privileges.

34) When punishment is necessary for the maintenance of discipline, one of the following methods shall be adopted:—

- (i) Forfeiture of rewards or privileges (including pocket-money) or temporary loss of recreation.
- (ii) Alteration of meals for a period not exceeding three days: provided that any such alteration shall be within the limits of a special dietary scale approved by the Chief Inspector.
- (iii) Separation from other boys: provided that this punishment shall only be used in exceptional cases and subject to the following conditions:—

- (a) No boys under the age of twelve shall be kept in separation.
 - (b) The room used for the purpose shall be light and airy and kept lighted after dark.
 - (c) Some form of occupation shall be given.
 - (d) Means of communication with a member of the staff shall be provided.
 - (e) If the separation is to be continued for more than 24 hours the written consent of one of the Managers shall be obtained and the circumstances shall be reported immediately to the Chief Inspector.
- (iv) *Corporal punishment*.—Every effort shall be made to enforce discipline without resort to corporal punishment. Where it is found necessary its application shall be in strict accordance with Rule 35 or 36 as the case may be.

35) Corporal punishment in boys' schools shall be subject to the following conditions:—

- (a) It shall be inflicted only with a cane or tawse of a type approved by the Secretary of State.
- (b) If applied on the hands, the cane shall be used and the number of strokes shall not exceed three on each hand, but no boy over fifteen shall be so punished.
- (c) If applied on the posterior with a cane or tawse, it shall be applied over the boy's ordinary cloth trousers and the number of strokes shall not exceed six for boys under fifteen or eight for boys of fifteen and over: provided that in exceptional cases, with the special approval of one of the Managers, twelve strokes may be administered to boys of fifteen and over.
- (d) No boy with any physical or mental disability shall be so punished without the sanction of the Medical Officer.
- (e) No corporal punishment shall be inflicted except by the Headmaster (or during his absence by the officer appointed under Rule 21 to exercise the duties of the Headmaster) or by an officer of the school in his presence and under his direction.
- (f) It shall not be inflicted in the presence of other boys.
- (g) Notwithstanding the provisions of paragraphs (e) and (f) of

this Rule, for minor offences committed in the schoolroom by boys under fifteen, the principal teacher may be authorised by the Managers to administer with the cane not more than two strokes on each hand. Where the principal teacher is so authorised by the Managers to administer corporal punishment, he shall keep a book to be known as the Schoolroom Punishment Book and he shall at once enter therein any corporal punishment inflicted by him under this paragraph.

36) Corporal punishment in girls' schools shall be subject to the following conditions:—

- (a) It shall be inflicted only on the hands with a cane of a type approved by the Secretary of State and shall not exceed three strokes on each hand, but only girls under fifteen shall be so punished.
- (b) No girl with any physical or mental disability shall be so punished without the sanction of the Medical Officer.
- (c) It shall only be inflicted by the Headmistress (or during her absence by the officer appointed under Rule 21 to exercise the duties of Headmistress) or by an officer of the school in her presence and under her direction.
- (d) It shall not be inflicted in the presence of other girls.
- (e) Notwithstanding the provisions of paragraphs (c) and (d) of this Rule, for minor offences committed in the schoolroom by girls under fifteen, the principal teacher may be authorised by the Managers to administer with the cane not more than two strokes on each hand. Where the principal teacher is so authorised by the Managers to administer corporal punishment, she shall keep a book to be known as the Schoolroom Punishment Book and shall at once enter therein any corporal punishment inflicted by her under this paragraph.

37) The Headmaster shall be responsible for the immediate recording of all corporal and other serious punishment in the Punishment Book which he is required to keep under Rule 18, except corporal punishment inflicted by the principal teacher under Rule 35 (g) or 36 (e) as the case may be, and he shall enter therein such details as may be required by the Chief Inspector.

The Headmaster shall examine the Schoolroom Punishment Book, if any, at least once a week and shall sign it.

The Punishment Book (and the Schoolroom Punishment Book, if any) shall be examined at each meeting of the Managers and shall be signed by the Chairman. They shall also be shown to the Medical Officer at least once a quarter.

38) Except as provided by these Rules no member of the staff shall inflict any kind of corporal punishment. The term "corporal punishment" includes striking, cuffing, shaking, or any other form of physical violence. Any person who commits a breach of this rule shall render himself liable to instant dismissal.

39) No boy shall be allowed to administer any form of punishment to any other boy.

Placing out and after-care.—(40) It shall be the duty of the Managers to place out on licence each boy as soon as he had made sufficient progress in his training. With this object in view they shall review the progress made by each boy and all the circumstances of the case (including home surroundings) towards the end of his first year in the school and thereafter as often as may be necessary and at least annually, considering at each review the date at which he is likely to be fit to be placed out on licence.

Provided that where there is reason to believe that a boy can be placed out during the first twelve months of his detention the case shall be reported to the Secretary of State with a view to his consent being obtained.

41) The Managers shall see that every effort is made to obtain suitable employment for a boy who is fit for release on licence and for this purpose they shall avail themselves where necessary of any help that can be obtained whether from public organisations or private individuals. Where the boy's home is unsatisfactory they shall place him in a hostel or other suitable lodging.

42) The Managers shall provide every boy on leaving with a sufficient outfit and if necessary, with a reasonable sum for travelling and subsistence, and they shall communicate with his parent or guardian and the local authority, if any, responsible for his maintenance.

43) The Managers shall satisfy themselves that adequate arrangements are made for the after-care of every boy released from the school until the statutory period of supervision expires.

32. Corporal Punishment of Young Offenders by Courts of Summary Jurisdiction

REPORT OF THE DEPARTMENTAL COMMITTEE ON CORPORAL PUNISHMENT
PRESENTED BY THE SECRETARY OF STATE FOR THE HOME OFFICE DEPARTMENT
TO PARLIAMENT BY COMMAND OF HIS MAJESTY, MARCH, 1938 (LONDON:
H.M. STATIONERY OFFICE, 1938) (CMD. 5684)

HISTORY AND EXISTING LAW

8. *England and Wales*.—Before 1847 Justices of the Peace had no jurisdiction to deal summarily with felonies, and all such cases had to be committed for trial at Assizes or Quarter Sessions, however young the offender and however trivial the offence. As a result, large numbers of children were committed to prison to await trial on indictment for small thefts and other offences which, though not serious, were classed in law as felonies. The conditions in the prisons were such that these children could not fail to be contaminated by association with hardened criminals, and in order to meet this situation an Act was passed in 1847 "to ensure the more speedy trial of juvenile offenders and to avoid the evils of their long imprisonment before trial." This Act (10 & 11 Vic. c. 82) enabled any two or more Justices of the Peace to deal summarily with any child under fourteen years of age charged with any offence of simple larceny or any offence punishable as simple larceny; and it provided that any child so dealt with might be fined not more than £3, or sentenced to imprisonment for not more than three months, and, if a male, might also be ordered to be once privately whipped, either instead of or in addition to imprisonment. In 1850 the jurisdiction thus conferred on the Justices by the Act of 1847 was extended to all persons under the age of sixteen years, but it was specifically provided that the power to order whipping should apply only to boys under fourteen years of age (13 & 14 Vic. c. 37). In 1862, Justices exercising this power to order whipping were required to specify in their sentence the number of strokes to be inflicted; and it was provided that the instrument used should be a birch

rod and that the maximum number of strokes should be twelve (Whipping Act, 1862, section 1).

This jurisdiction was further extended by the Summary Jurisdiction Acts, 1879 and 1899, which empowered Justices in petty sessions to deal summarily, not only with offences of simple larceny, but with all indictable offences (other than homicide) committed by persons under sixteen years of age. Whipping was among the penalties which the Justices were empowered to impose in such cases, either instead of or in addition to any other punishment; but this power of whipping was again restricted to boys under fourteen years of age. The instrument and the maximum number of strokes were prescribed by the statute—for "children" (i.e., those under twelve years of age) six strokes with a birch rod; and for "young persons" under fourteen years (i.e., those over twelve and under fourteen years) twelve strokes with a birch rod. The punishment was to be carried out in private, as soon as practicable after the sentence had been pronounced. It was to be administered by a constable, in the presence of an inspector or other officer of police of higher rank than a constable; and the parent or guardian of the child was to be allowed to be present if he so desired (Summary Jurisdiction Act, 1879, sections 10 and 11).

Section 128 of the Children Act, 1908, amended the definitions of "child" and "young person" in the Summary Jurisdiction Act, 1879, by substituting "fourteen years" for "twelve years." This had the effect that under section 10 of the Act of 1879 six strokes was the maximum punishment by whipping for boys under fourteen years of age; and the Children Act accordingly repealed the provision in section 11 of the Act of 1879, which had previously authorised a maximum of twelve strokes for boys over twelve and under fourteen years. From 1908 onwards six strokes has been the maximum number which Justices can order for any boy up to the age of fourteen.

In 1927 a Departmental Committee on the Treatment of Young Offenders submitted a Report¹ on the various methods then available for dealing with juvenile delinquents. The birching of young offenders was the only question on which this Committee was not

¹ Cmd. 2831. Published by H.M. Stationery Office. Price 2s. 6d.

unanimous. Three of the members signed the Report subject to the reservation that they were "not satisfied that whipping ordered by the court of law serves a useful purpose." The other ten members recommended that whipping should be retained as a punishment for juveniles and that the existing powers should be extended so as to give the courts "discretion to order a whipping in respect of any serious offence committed by a boy under seventeen." . . .

Legislation to implement the other recommendations made in this Report was not introduced until 1932, and by that time the use of birching had been abandoned by the great majority of the Juvenile Courts in England and Wales. In the Children and Young Persons Bill of that year it was necessary to re-enact, with amendments, the provisions of section 10 of the Summary Jurisdiction Act, 1879: and it was decided by the Government of the day that, in spite of the majority recommendation of the Young Offenders Committee, this opportunity should be taken to omit from that section the provision conferring on summary courts their general power to whip boys under fourteen for indictable offences. This part of the Bill was therefore introduced in a form in which it would have had the effect of withdrawing this power of whipping from courts of summary jurisdiction in England and Wales. In the House of Commons the Bill obtained a Second Reading without a division, and an amendment moved in Committee Stage to retain the existing power of whipping was negatived without a division. In the House of Lords, however, an amendment designed to retain the existing power of whipping was carried by 65 votes to 22. When the Lords' amendments were considered in the Commons, this amendment was rejected without a Division. The Bill then went back to the House of Lords, who insisted on their amendment by a majority of 41 votes to 33, and the power of whipping was once more inserted. On the last day of the Session the Bill returned again to the House of Commons, who were then presented with the alternatives of accepting this amendment or losing the whole Bill. In these circumstances the House of Commons were persuaded to accept the amendment, and after a Division it was carried by 133 votes to 44 . . . [pp. 10-12].

At present, therefore, young offenders under fourteen years of

age are, with very few exceptions, always dealt with by the courts of summary jurisdiction, which alone can exercise this general power to punish by whipping boys of this age who are found guilty of indictable offenses [p. 13].

13. Apart from a marked rise during the war years 1915-18, the number of birchings have fallen steadily throughout this period [1900-1936]. This fall is not to be attributed to a decrease in the numbers of offenders liable to be birched. This is most evident in relation to the recent years 1932-36, when the numbers of birchings have not shown any marked tendency to rise in spite of a considerable increase in the numbers of young offenders brought before the courts. In 1932 the number of boys under fourteen dealt with summarily for indictable offences was 8,449, or 404 per 100,000 of the estimated population in that age-group: in each of the succeeding years the number increased, and in 1936 the corresponding figure was 13,702, or 717 per 100,000 of the estimated population in that age-group. The numbers of birchings during that period showed no increase comparable to the great rise in the numbers of offenders liable to birching—indeed, apart from a rise in 1935, they remained fairly constant throughout the period.

In the great majority of the Juvenile Courts in England and Wales the use of birching has been entirely discontinued. The birchings which still occur are ordered by a small number of courts, and (subject to the exceptions mentioned in paragraph 29) occur mainly in country districts or in the smaller towns. The Juvenile Courts in London and in many of the larger towns have not in recent years made any use of their powers to order corporal punishment [pp. 19-20].

SUMMARY OF EVIDENCE

15. Theorists have recognised that punishment may be justified on three main grounds—retribution, deterrence and reform—but the changes which have taken place in our penal methods during the last century have been aimed at subordinating the retributive element to the other elements of deterrence and reform. So far as concerns young offenders, at any rate, few people would now defend methods of treatment based purely on the retributive principle; and in the Children and Young Persons Act, 1933, Parlia-

ment expressly directed the Juvenile Courts to concentrate their attention primarily on the element of reform. . . . We agree that Juvenile Courts should not deal with children by methods which are "punitive" in the sense that they are based merely on retributive principles: but we cannot accept the view that their methods should never in any circumstances include any punitive element . . . [p. 22].

A deterrent penalty may be imposed either to deter the offender who suffers it from repeating his offence, or to deter others from committing similar offences. In the case of young offenders, at any rate, we think that the second of these two objects should always be subordinated to the first—i.e., if the penalty suggested is not the method of treatment most suited to the needs of the individual offender, it should not be imposed merely on the ground that it is calculated to deter others . . . [p. 23].

16. In these circumstances we have, from the outset of our enquiry, directed our minds to the question whether birching is in fact effective in deterring the child so punished from committing further offences. There is very little statistical evidence on this point. Apart from some limited figures collected by the late Sir William Clarke Hall and published in his book *Children's Courts*, the only published statistics, so far as we have been able to ascertain, are those given in the Report published by H. M. Stationery Office in 1920, of an enquiry into juvenile delinquency by the Juvenile Organisations Committee of the Board of Education. The enquiry was conducted in four selected centres of industrial population, but the figures relating to birching were obtained from two centres only—a large seaport and a manufacturing town. These showed that out of 574 children birched, 222 appeared before the courts again within six months, 109 within twelve months and 109 within two years. In all 440, or over 76 per cent., were charged with a fresh offence within two years of being birched. Comparison of these records with those of children dealt with in other ways appeared to show that birching had been less effective as a deterrent than other methods of treatment . . . [pp. 23-24].

18. As regards England and Wales, the weight of the evidence was definitely against the use of birching as a method of dealing

with young offenders. Among the witnesses from Scotland, on the other hand, the balance of opinion was in favour of birching. . . .

We have had the advantage of hearing evidence from a number of Justices and Stipendiary Magistrates who sit in Juvenile Courts in various districts in England and Wales. Some of these were connected with courts in which birching is still ordered on occasion. Those who had had the longest experience in dealing with young offenders had come to the conclusion that, as a punishment administered by order of a court, birching is not a satisfactory method of treatment. . . . The minority who favoured the retention of this form of punishment thought it unwise to deprive the Juvenile Courts of one of the few penalties available to them which involve a marked element of punishment for the offender. As one witness put it, "the birch is felt by the offender himself, and it inflicts no hardship on his family." These witnesses appear to have been influenced to a large extent by the recent increase in the numbers of children charged with offences against the law. They suggested that, at a time when juvenile delinquency appeared to be growing to an alarming extent, every possible expedient should be tried to check the increase and no existing method of dealing with young offenders should be discarded . . . [p. 26].

19. The witnesses who gave evidence on behalf of the National Association of Probation Officers were definitely against the retention of any power to order corporal punishment of young offenders. . . . They based their view mainly on the ground that birching was not a sufficiently constructive method of treatment: it made no attempt to deal with the causes underlying the offence and for this reason had not, in their experience, been an effective means of improving the child's conduct . . . [p. 28].

21. On the medical aspect of this question, we have heard evidence from medical-psychologists, psycho-analysts, and doctors who have had practical experience in examining boys ordered to be birched and in supervising the administration of the punishment.

We are satisfied that, from the purely physical point of view, there is no special danger in this form of punishment. . . .

A brief medical examination will normally suffice to decide whether a boy is physically fit for birching: but to assess a boy's

psychological and temperamental capacity is a more difficult matter [p. 31].

The medical-psychologists who gave evidence before us saw great objection to birching as a judicial punishment for young offenders. While they admitted that there might be a few cases in which corporal punishment would operate as an effective deterrent, without doing any psychological harm, they considered that the selection of these suitable cases was a difficult task involving detailed investigation and observation by a skilled medical-psychologist over a comparatively long period. On the other hand, they recognised that corporal punishment, to be effective, should follow as closely as possible after the offence, and they considered that it would usually be undesirable to carry out a birching after the delay involved by the prolonged investigation which they regarded as an indispensable preliminary [p. 32].

The psycho-analysts' view of this question is based very largely on a theoretical analysis of the impulses underlying the desire to inflict corporal punishment. . . . Briefly stated, it is that the impulse to punish—as opposed to the treatment, reform, or even preventive detention of an offender—derives from an element of sadism which, in a conscious or (more often) unconscious form, exercises an influence over the thoughts and actions of a majority of the community. Punishment, in so far as it is imposed merely for punishment's sake, is an expression of the hatred felt by the community towards the person who has offended against the laws of the community. This element of sadism, which is present in all punishment *qua* punishment, is accentuated when the punishment takes the form of inflicting physical pain: for corporal punishment is not only an expression of hate impulse, but is also a direct or indirect expression of sexual impulse. . . . [pp. 32-33].

CONCLUSIONS

24. We wish to make it clear at the outset that our conclusions are not based on any objection in principle to all use of corporal punishment as a method of correction for children. It was not within our terms of reference to consider the use of corporal punishment by parents and schoolmasters, and it would not be proper for us to

express any opinion on those uses of corporal punishment
[p. 34].

In our view corporal punishment as a court penalty stands on an entirely different footing from corporal punishment by a parent or a schoolmaster. There are numerous points of difference, but for our present purposes the following are the most important:—

(a) In the home, corporal punishment is administered by the parent, and there is a relation of mutual affection between the child and the person who punishes him. (In cases where there is no such bond of affection between the parent and the child, we should not be prepared to defend corporal punishment, even in the home.) In the school, corporal punishment is administered by a master, for whom the boy feels at least respect and often affection. In both cases, the punishment is usually administered by the persons who decided that it should be inflicted and, even when this is not so, by a person who agrees with that decision and is also in a direct personal relation to the boy. . . . When a young offender is birched by order of a court, the circumstances are very different. When the Justices have given the order, they have no further concern with the matter and the boy is handed over to be birched by a police officer who has had no connection with the case. . . . It is to be borne in mind that the average age of the boys to whom this punishment is applied is about twelve, and few boys of this age can be expected to recognise even the retributive justification of birching as an expression of society's indignation at a breach of its laws. As has been stated in a very helpful memorandum submitted to us by Dr. Cyril Burt, they might understand a sound thrashing from the victim of their offence: but a judicial birching is more likely to appear as an arbitrary and cold-blooded act of cruelty on the part of an official who has himself suffered no wrong [p. 35].

(b) The second great difference between these two types of corporal punishment is that in the home and in school the relation between the boy and the person punishing is a continuing one. . . . After a judicial birching, on the other hand, there is no supervision or aftercare. . . . Birching may have different effects on different boys. It may make one humble, another embittered, and in another it may produce a spirit of bravado. . . .

(c) Thirdly, there is the vital question of delay. At home and in school corporal punishment follows very closely after the detection of the offence. In the judicial birching there must always be some delay before the offender comes before the court, and a further delay if proper enquiries are to be made to ascertain whether the case is one in which corporal punishment is a suitable penalty . . . [p. 36].

It has been said that corporal punishment, if it is to be effective, should be certain, swift and exceptional. As a judicial punishment for young offenders it cannot be either certain or swift, and this, we believe, imposes a very great restriction on its usefulness as a court penalty.

25. . . . There are comparatively few cases in which children are physically incapable of enduring this degree of corporal punishment; . . . [p. 37].

We are, however, impressed by the difficulties of assessing whether a particular boy is suitable for this type of punishment from the psychological and temperamental point of view. This is important on two grounds. Birching should not be ordered (a) in any case in which it might produce detrimental psychological effects, or (b) in a case in which the boy's temperament is such that it would not be effective. . . . If they [the Justices] are to obtain the data on which to form a considered opinion on this question they must remand the child for a period so that he can be kept under observation with a view to obtaining some insight into his character and disposition, as well as information about his previous history and home circumstances. . . . [pp. 37-38].

26. . . . The boy who has been birched is often regarded as a martyr by his parents . . . and where this happens the whole value of the punishment is lost.

There is also a very real danger that a boy who has been birched may be regarded as a hero among companions of his own age . . . [p. 39].

30. In view of all these considerations, and having regard to the opinions formed by persons of long experience and mature judgment, we have come to the conclusion that, as a court penalty, corporal punishment is not an effective method of dealing with young offenders. We do not regard it as a suitable penalty for serious cases:

these require constructive methods of treatment, designed to deal with the causes and conditions underlying the offence, and corporal punishment is essentially non-constructive. In other cases—e.g., some simple cases of damage to property or other offences due purely to a spirit of mischief—there is not the same need to train or re-educate the offender, and some form of sharp summary punishment may be all that is required. . . . Judicial birching is surrounded with an atmosphere of importance which makes it quite unsuitable for use in these minor cases . . . [p. 44].

CORPORAL PUNISHMENT FOR OFFENCES IN BORSTAL INSTITUTIONS

82. Section 4(2) of the Prevention of Crime Act, 1908, provides that subject to any adaptations, alterations and exceptions which the Secretary of State may prescribe by Borstal Regulations, the Prison Acts, 1865 to 1895, and the Rules made thereunder shall apply to a Borstal Institution as if it were a prison. This has the effect that persons detained in a Borstal Institution in England may be made liable to corporal punishment as if they were detained in a prison: but, by Section 5 of the Prison Act, 1898, corporal punishment may not be inflicted on a prisoner unless he has been either (a) sentenced to penal servitude, or (b) sentenced to imprisonment with hard labour, or (c) convicted of felony; and, as the first two of these requirements cannot apply to him, a person detained in a Borstal Institution is not liable to corporal punishment unless he has been convicted of felony. Thus, under the existing law, an inmate of a Borstal Institution is not liable to corporal punishment for any offence against discipline if the offence for which he was sentenced to Borstal detention was a misdemeanour, but if his offence was a felony he is liable to corporal punishment for the three disciplinary offences of mutiny, incitement to mutiny, and gross personal violence to an officer or servant of the Institution. . . . Under the Regulations a Borstal inmate over eighteen years of age may be ordered corporal punishment either with the cat or with the birch; but in practice the cat is never used in Borstal Institutions and in the few cases where corporal punishment has been ordered the punishment has always been administered with the birch.

In practice it has rarely been found necessary to resort to this

method of enforcing discipline in Borstal Institutions. As will be seen from the figures given in Appendix IV, corporal punishment has been imposed in only 26 cases during the 27 years from 1910 to 1936; and in the last 10 years there have been only 7 cases, although in that period the population of the Institutions has nearly doubled. In recent years it has been used mainly in the special Borstal Wing at Wandsworth Prison, which is reserved for youths who have failed to make satisfactory progress after release or licence from another Institution and have been recalled, by revocation of their licence, to undergo a further period of discipline.

In Scotland there is no power to inflict corporal punishment for an offence against discipline in a Borstal Institution.

83. There was some division of opinion among the witnesses on the question whether it is necessary to preserve the power to impose corporal punishment for serious offences against discipline in Borstal Institutions in England. The Prison Commissioners took the view that this power should now be abolished. They considered that under a purely reformatory system such as is now in force in the Borstal Institutions there are so many positive incentives to good conduct that it is unnecessary to rely on the purely deterrent influence of the birch. . . . The Prison Commissioners were of opinion that the retention of corporal punishment could be justified only on the ground that it was essential for the purpose of preserving discipline. Both from their general experience of the Institutions and also because this form of punishment has almost ceased to be used in practice, they were satisfied that it is not essential to retain this power of corporal punishment in Borstal Institutions, and they recommended that it should be abolished.

The Conference of Visiting Justices and Boards of Visitors had taken steps to ascertain the views held on this question by all the Visiting Committees at Borstal Institutions, and we were informed that the Committees were of opinion that the power to order corporal punishment in Borstal Institutions should be retained. The view generally held by the Committees was that the power should be kept in reserve as an ultimate sanction, even though it would only be used in very exceptional cases . . . [pp. 121-22].

In view of these representations by the Visiting Committees we

asked the Prison Commissioners to invite a further expression of opinion from each of the Governors of the seven Borstal Institutions in England. In answer to this special enquiry, five of the Governors stated that they were in favour of the repeal of the existing power of corporal punishment in Borstal Institutions. The other two thought it would be expedient to retain the power, even though they anticipated that it would only be used in very rare cases.

We may add at this point that in Borstal Institutions in Scotland no difficulty has been experienced through lack of a power to impose corporal punishment for offences against discipline, and the prison authorities in Scotland do not desire that any such power should be introduced in the Borstal Institutions under their control.

84. . . . After giving due weight to the considerations which can be urged on both sides, we have come to the conclusion that it is no longer essential to retain the power to impose corporal punishment for offences against discipline in Borstal Institutions, and we therefore recommend that this power should be repealed [p. 123].

33. Observations of an American Probation Officer on a London Children's Court

ETHEL N. CHERRY, SUPERVISOR OF CASE WORK, WESTCHESTER COUNTY PROBATION DEPARTMENT, WHITE PLAINS, N.Y., IN PROCEEDINGS OF THE TENTH ANNUAL CONFERENCE OF THE NEW YORK STATE ASSOCIATION OF JUDGES OF CHILDREN'S COURTS, OCTOBER 27-29, 1932 (PUBLISHED BY THE NEW YORK STATE DEPARTMENT OF CORRECTION, DIVISION OF PROBATION ALBANY, 1935)

I was fortunate in having a chance to visit Sir William Clarke Hall's court in London which was held on that day in the slum district of London. The court room was a large, light airy one on the first floor of a library building. Sir William is a dignified but very kindly and understanding judge. He sat behind a large desk which was in a semi-circle formation. Beside the desk also sat a woman justice of the peace who was said to have had some experience in children's welfare work.

It is customary for the judge to ask various people who are interested to sit on the bench with him. Eight of the probation officers attached to the court were also at the hearing. Two representative

educational authorities from the London County Council, social workers from religious organizations, the stenographer, clerk and attendants of the court, the child's parents and school teachers were also present. It gave one the impression of a very over-crowded court room and one had a feeling that the child was facing considerable of an ordeal as he came into the waiting room. . . .

However, there was no formality about the court. The judge did not wear a robe nor were the police officers in uniform . . . [p. 31].

As the children came before Sir William, they stood quite near him in the circle formation of the desk and there was a friendly relationship between the judge and the child. The judge had a short report in his hand from the probation officer. This report dealt mostly with the reason for committing the offense and a little picture of the home environment. After the judge had read this report he called upon the London County Council to give the school history. The representative of this group gave a complete school history with the history of the family as the school had known them. He reported in three cases that the head master had suggested to the parents that the child be taken to the child guidance clinic because of behavior problems in his early school years . . . [p. 32].

Sir William has been in children's court work in London for many years and has a kindly sympathetic approach. He spent a great deal of time on each case, talking at some length to the child. However, in no case did he take the child out of the court room to his own chambers to discuss his problem with him. . . . In many cases Sir William discussed with his advisor, the lady justice of the peace, the various phases of the case in subdued tones but the discussion could very easily be overheard by the child.

In this court many more children were remanded to the detention home than is our custom in Westchester County. The judge told us that this was for the purpose of physical and mental examination and that he felt the child needed a time away from its family. While we all know the great value of observation periods unless very great care is used in segregation of various types it seems a little dangerous to remand children of all ages and all offenses when they might be kept in their own homes during the examination period.

In cases which came before the judge for disposition, a representative from the Home Office, which is the centralized department in London for all correction work throughout Great Britain, submitted to the judge two suitable institutions which were prepared to meet the need of the child, telling the judge which of the two they recommended.

I was particularly well impressed with the judge presenting to the children the opportunities in the various industrial schools to which he planned to commit them before giving his decision. He apparently was familiar with all of the schools and promised the child to visit to see how he was "getting on" sometime within the year . . . [pp. 32-33].

One had an impression as the cases went before the judge that there was a great deal of poverty and suffering in London; that although the dole system brought something into each family the children were going to work as soon as they reached the legal age limit of fourteen and making only a corresponding wage of \$1.50 to \$3.00 a week. While they do not have the great problem of foreign population and they are dealing with the children of British parents only, the picture of the home with the ten to twelve children living in two rooms was appalling.

Children are never arrested in England, but are summoned before the court. One had a feeling that both the parents and the children had a great respect for the court.

Sir William told us in an interview after the court session that he had only recently begun to realize the great value of probation officers and within the past two years his force had increased to fourteen women probation officers. These women are trained workers. Many of them are university graduates with a specialized course which is being given under the auspices of the Home Office. They are, however, working individually and not under supervision except by the judge. Sir William felt the lack of supervision and organization. He expressed great interest in the organization of the Westchester County Probation Department. He stated that as soon as the financial situation was better in London he hoped to be able to obtain an experienced director and to have in his group a case supervisor. As the court moves about in London a deputy in charge

of the local districts would be very helpful. He asked that reports be sent to him from time to time.

Sir William is very much interested in the fact that Judge Smyth¹ always requests that a child be brought back to him at the time of his discharge from probation so that he may commend him on the progress he has made. We find this to have an excellent psychological effect on the child because he feels that the same judge who has placed him on probation is also anxious to commend him for his progress. In the more difficult cases it has been helpful also to bring the children back before Judge Smyth for report at various stated periods of time so that he, too, can watch their progress.

The child guidance clinic in London has made great progress within the past few years and is becoming better known and more widely used . . . [pp. 33-34].

The children's court uses many of these clinics and especially Maudsley Hospital which is a specialized hospital for mental diseases. Many of the children who are in need of special observation are sent here by the courts. . . .

The correctional school in Great Britain is well organized and is apparently doing excellent work for the young offenders. There are two distinct types of correctional schools run under supervision of the Crown: the industrial schools which might correspond to some of our special experimental schools run by private groups; then the reformatories, the so-called "Borstals" or correctional institutions, and the State prisons.

I visited the Princess Mary Home which is an industrial school primarily for young girls. This school was a group of attractive small cottages built to house twelve children. The children are committed here by the children's courts but are younger, less hardened offenders. They are placed in family grouping with children from eight to sixteen. They have a progressive school and excellent trade facilities.

As psychiatrists are recognizing that many children after they reach ten years of age are unable to make the adjustment to a foster home life and adjust better to a group life, schools of these

¹[George W. Smyth, Judge, Westchester County Children's Court, White Plains, N.Y.—EDITOR.]

types would be most helpful for some of our problem children. This school is run very much on the plan of many boarding schools in England. Physical training is a large feature of their work and swimming is emphasized. Children who have special aptitudes at the age of fourteen are allowed to work for scholarships to go on to private trade schools.

Excellent "after care" is given to the children who leave the schools and return to the community. The parole work of any institution is as vital and important as the care given within the institution. These girls are visited each week for the first two years and a system of friends of the court has been built up, who keep very close touch with the boy or girl in addition to the professional paid worker. Emphasis is placed on wholesome recreation as well as proper environment . . . [pp. 34-35].



PART III

THE STATE AND THE CHILD OF UNMARRIED PARENTS



INTRODUCTION

The complicated problems involved in removal of the legal handicaps which the state placed upon children born out of wedlock received little official consideration until the present century. The duty recognized by the state was the one of preventing or reducing illegitimacy and the dependency that it created. Under the double standard of morals public opinion held the mother to be the offender, and the question was assumed to be how women could be kept from transgressing the moral and statutory law. The early legislation adopted was not based on any scientific study of the causes of these extra-marital relations even so far as the women were concerned. Such a study we now know would have involved consideration of such personal factors in the unmarried mothers as feeble-mindedness, ignorance of the biological facts of life, high sexual suggestibility, lack of industrial proficiency and of personality development. It would have revealed the influence of family standards and ideals, poverty in the home, and immoral and unsympathetic parents. Education,¹ early employment, and the type of employment would have been discovered to be present in the chain of causes that led to this deviation from the legal and social standard. The presence of a socially inferior race, the position of women, and the community attitude toward premarital relationships especially after betrothal would also have been found to influence the illegitimacy rate of a nation. Any consideration of these causes indicates how futile punishment of the mother would be in most cases and that, no matter what policy of prevention the state adopted, there would be children born out of wedlock whose needs and rights the state should consider. Enlightened selfishness as well as sympathy for the innocent victims required a program for the

¹ An article by S. J. Holmes and E. R. Dempster on "The Trend of the Illegitimate Birth-Rate in the United States" (*Population, Journal of the International Union for the Scientific Investigation of Population Problems* [London], II, No. 2 [November, 1936], pp. 16-18), gives some interesting correlations of illiteracy and illegitimacy rates in the United States.

care of the children. But reliance was placed upon deterrence. Harsh punishment for the mother and denial of legal rights to children were relied upon to reduce illegitimacy. To protect the victims of these illegal relationships would, it was believed, increase the number of illegitimate children.

Miss Breckinridge has summarized in *The Family and the State*¹ the early English legislation on this subject. Punishment of the "lewd woman" who was the mother of a "bastard" was provided in the Act of 1609, and an earlier statute gave to the justices of the peace the authority to order punishment of the mother while the responsibility of the father was ignored.

Blackstone's summary of the common law (p. 507) shows the early legal handicaps placed upon these children in England in the eighteenth century, while the extract from Kent's *Commentaries* (p. 510) and the court decisions that are given (p. 537) reveal how closely our own common law has followed that of England. Connecticut was unique in the early development by the common-law process of a more just attitude toward the illegitimate child (p. 539).

The common law of England and the United States placed the child in a more unfavorable position than did the Roman civil law, on which the legal systems of Continental Europe are based, because it did not recognize a legal relationship even between the mother and the child and did not provide for legitimation by subsequent marriage of the parents. But in every country the difficult position of these children who were usually unwanted and lacked the safeguards of normal home life was made more serious by legal discriminations. During the French Revolution a law radically changing the rights of illegitimate children and the responsibilities of their parents was passed in France in 1793. It was emasculated by court interpretations and in the Code Napoléon the position of the illegitimate child in France was made worse than it had been under the old regime. The Code Napoléon provided for investigation of maternity but prohibited the determination of paternity—*La recherche de la paternité est interdite*²—at a time when England

¹ (University of Chicago Press, 1934), pp. 415-17.

² Code Napoléon, Art. 340. For a discussion of the Act of 1793 and its appeal, see Crane Brinton, *French Revolutionary Legislation on Illegitimacy, 1789-1804* (Cambridge: Harvard University Press, 1936), pp. 6-10, 42-51.

and the states of the United States were increasing the responsibilities of the father.

Under the bastardy laws enacted in this country the mother could recover from the father of her child a sum wholly inadequate for its support even on a relief standard.¹ The proceedings were usually criminal, but in a few jurisdictions—Iowa, Montana, and Oklahoma, for example—the bastardy laws provided for civil procedure.² The great advantage of the civil proceeding was that the trial could be held in the absence of the defendant, judgment could be based upon a preponderance of evidence, and, while a jury could be asked for, it was not required.

The bastardy laws failed, on the whole, even to provide maintenance for the children, as proceedings against the putative father had to be initiated by the mother, and she often failed to proceed against him because she was ignorant of the law, unwilling for a combination of reasons to prosecute him, or was careless of the rights of her child. Many of these mothers accepted the judgment of society that they were responsible for the position in which they found themselves and the handicaps under which their children, although they were without fault, were placed by the law.

Improvement in the bastardy laws by increasing the amount the father might be required to pay and providing some plan for regular collection of the court award antedated a fundamental change by any American state in the legal status of the illegitimate child.³ When plans for assistance to the mother in the preparation of her case, in the collection by the state of the money the court ordered the father to pay were made, the bastardy laws (p. 552) accom-

¹ In 1938 the laws of nine states, Alabama, Delaware, Florida, Illinois, Maryland, Oregon, South Carolina, Tennessee, and Utah, still fixed maximum amounts which the courts could require the father to pay for the support of the child. The monthly amounts specified varied from \$15 in Maryland to \$40 in Delaware, and the annual amounts from \$50 in Florida to \$350 during the first two years and \$500 thereafter in Oregon.

² Ernst Freund, *Illegitimacy Laws of the United States and Certain Foreign Countries* (U.S. Children's Bureau Publication No. 42; Washington, D.C. 1919), pp. 38-39.

³ Dorothy F. Puttee and Mary Ruth Colby in *The Illegitimate Child in Illinois* (University of Chicago Press, 1937) show how Illinois has followed this policy of modification of its bastardy law instead of making fundamental and much needed changes in the legal status of the child.

plished more. To the mother and to the social agencies of the nineteenth century the only practical plan for caring for the child seemed to be for the mother to surrender her child when marriage was impossible, not contemplated, or inadvisable.

Before discussing the steps by which provision for this group of children has been improved in recent years, it is important to consider the number of children whose welfare is affected by the policy adopted and certain facts about their parents. In the leading European countries the number of illegitimate children per 1,000 live births was as follows in 1933: Austria 280,¹ Sweden 153.8,² Germany 105,³ Denmark 102,⁴ Hungary 100,⁵ Norway 70.5,⁶ Italy 51,⁷ Great Britain 47.⁸ In the United States in the same year there were 39.7⁹ illegitimate births out of every 1,000 live births. This means that in the United States the number of children born out of wedlock approximates 80,000 a year.¹⁰

Illegitimacy rates in the United States vary greatly from state to state and in different sections of the same state. The southern states have the highest rates;¹¹ a group of western states the lowest;¹² the rates in the middle western states are somewhat lower than for the United States as a whole;¹³ while another group of widely scattered

¹ *Statistisches Handbuch für der Republik Österreich*, 1933, pp. 16-21. This rate is for 1932.

² Provisional figure, *Statistisk Årsbok för Sverige*, 1935.

³ *Statistisches Jahrbuch für das Deutsche Reich*, 1934 and 1935.

⁴ *Statistical Yearbook of Denmark*, 1935.

⁵ *Annuaire Statistique Hongrois*, 1932 and 1933.

⁶ *Statistik Årbok for Norge*, 1935.

⁷ *Annuario Statistico Italiano*, 1934 and 1935.

⁸ *Statistical Abstract of the United Kingdom*, 1920-33.

⁹ U.S. Bureau of the Census, *Birth, Stillbirth, and Infant Mortality Statistics*, 1934, p. 10.

¹⁰ In 1935 the number reported by the Vital Statistics Division of the Census Bureau was 78,874 with Massachusetts and California not reporting whether the births are or are not illegitimate (*ibid.*, 1935, p. 10).

¹¹ South Carolina 104.8, Mississippi 87.4, Alabama 86.0, Louisiana 85.9, North Carolina 81.4, Georgia 78.5 in 1935. The District of Columbia rate was 82.7 in 1935.

¹² Utah 9.1, Idaho 10.6, Wyoming 14.4 in 1935.

¹³ Michigan 25.6, Illinois 25.0, Minnesota 24.7, Ohio 24.4, Wisconsin 22.3, Indiana 20.9.

states have rates considerably below the United States rate.¹ Although the rate of increase varies from state to state and from year to year, the trend has been upward in all sections of the country in both urban and rural areas and among the white and colored races since 1917, when the Vital Statistics Division of the Census Bureau began making reports on the illegitimate births. The increase was especially marked during the depression, when the illegitimacy rate per 1,000 live births increased from 31.9 in 1929 to 39.7 in 1933² in the United States registration area. This increase may be more apparent than real, owing to improved birth registration or the general decline of the birth-rate, for if the birth-rate falls and the number of illegitimate births remains substantially the same, the proportion of all births which are illegitimate will increase.

The age of both father and mother is reported on the birth certificate of legitimate children, but of the mother only in the case of an illegitimate birth. These reports show that the unmarried mothers are on the whole much younger than the married mothers. For example, 12.8 per cent of the mothers of all infants born in 1935 were nineteen years of age or younger, and 30.7 per cent were between twenty and twenty-four, while of the mothers of children born out of wedlock, 37,031, or 46.9 per cent, were nineteen years of age or younger, and 24,513, or 31.1 per cent, were between twenty and twenty-four.³ Some information about the age of the fathers is available in Minnesota, where much effort has been spent on the establishment of paternity. The *Biennial Report of the Minnesota State Board of Control for 1934-36* records that of the women who gave birth to illegitimate children in Minnesota during the preceding biennium, 33 per cent were under twenty, 44 per cent between twenty and twenty-four, 13 per cent between twenty-five and thirty, and 10 per cent were thirty years of age and over. The mothers were thus generally older in Minnesota than in the United States as a whole. As for the fathers, 7 per cent whose paternity was established were under twenty years of age, 35 per cent between twenty and twenty-four, 25 per cent between twenty-five and thirty, while

¹ Oregon 15.9, Kansas 17.2, Iowa 18.0, Nebraska 18.3, New York 20.3, Oklahoma 20.8, Connecticut 21.6, and New Hampshire 23.3 in 1935.

² U.S. Bureau of the Census, *loc. cit.*

³ *Ibid.*, pp. 8 and 11.

33 per cent were thirty years of age and over.¹ If age is accepted as a test of responsibility, the fathers are more responsible than the mothers for this social problem, although the early policy of deterrence was not directed against them.

The Negro illegitimacy rate is, for reasons not difficult to understand, very much higher than the white rate—164.4 compared to 20.4. The rate among the foreign-born mothers, 7.8, is lower than among the native-born white mothers, 21.1. Among the former, the highest ratios were in the Canadian, Irish, English, Scotch, and Welsh, and the lowest in the Italian group.

A more intelligent and humane approach to the problem of illegitimacy was delayed until the twentieth century, when a new conception of the rights of all children had developed. It was inevitable that, with the growing appreciation of the rights of children and the development of a public opinion against the double moral standard, the biological unsoundness of the theory of the common law that the illegitimate child was *nullius filius* or later the child of the mother only should be challenged. Except for the short-lived legislation during the French Revolution, the movement for a radical departure from the existing legal status of the illegitimate child did not develop until Norway led the way. Beginning in the last decade of the nineteenth century, Johan Castberg, first as attorney-general and then as minister of social welfare, was the Norwegian leader in the struggle for legal justice for the illegitimate child (p. 524). It is interesting to find that labor organizations were active in demanding radical changes in the existing laws, although Castberg, himself, attributes the change in public opinion to the Woman's Movement, which in Norway was from the beginning not so strictly confined to the advocacy of suffrage as it was in the United States and Great Britain. The Castberg Law finally enacted in 1915 is given at considerable length in the documents (p. 527) because it was widely discussed internationally and, reprinted and distributed by the United States Children's Bureau,² influenced American planning on the sub-

¹ *Eighteenth Biennial Report of the Minnesota State Board of Control*, p. 51. Included in the fathers for whom age is considered to have been established are those who following legal action admitted or acknowledged paternity as well as those whose paternity was established by the court.

² Publication No. 31 (1918), *Norwegian Laws concerning Illegitimate Children*.

ject. Perhaps the most radical changes made by the Castberg Law were that it placed the responsibility for establishing paternity on the state and required the mother to report the facts about paternity to the local authorities. Recognition by the State of the fact that these children have two parents equally responsible under the law for their maintenance and education has meant a fundamental change in their legal status in Norway.

There were several parties in interest to be considered in any modification of existing legislation—first, the rights of the illegitimate child, the innocent victim of his parents' defiance of law and social custom, and the rights of the mother and the father. Most frequently discussed, however, was the question of how a change in the status of the illegitimate children would affect the rights of the father's or mother's legitimate family, particularly in the matter of inheritance. This was considered to have an important relation to public morals, because many people believed that justice for the illegitimate child would mean an increase in illegitimacy, and because it was felt to be very unjust to a wife and legitimate children that their rights should in any way be decreased by the extra-marital relationship of the husband and father. The right of the illegitimate child to maintenance and education was first conceded, the object being to reduce the burden of their support by public relief. Reciprocal inheritance between the child and the mother was provided by statute in a few states early in the nineteenth century; so also was legitimation following subsequent marriage of the parents. But as to whether maintenance was to be on the economic level of the father or the mother or whichever was higher, there were great differences of opinion, and this question still awaits decision in most states. Although when a definite amount is not specified in the bastardy statutes, our courts take into consideration the father's ability to pay, they do not, in the case of a well-to-do father, require that he provide the level of care for them that he does for his legitimate children.

Minnesota was the first American state to change its law radically (p. 552), and at the same time set up in the Children's Bureau of the State Board of Control and the local child welfare boards machinery for the administration of the law (p. 622). It followed later with the

necessary supplementary regulation of placements by maternity homes, individuals, and children's agencies (p. 558). In the same year, 1917, that Minnesota adopted its comprehensive law, North Dakota gave the child born out of wedlock two parents from whom he had the right of inheritance, and four years later Arizona passed a similar law, but in neither was administrative machinery provided for making the law effective.¹ While Minnesota's state-wide administrative organization has certain important advantages, it should be noted that effective local machinery for assisting the mother in bastardy proceedings and in collection and supervision of the expenditure of the court award has been developed in some counties in a number of states.

The United States Children's Bureau supplied a new approach to the problem by directing public attention to the children of unmarried parents and the social costs which result from neglect of their welfare. It promptly made available an English translation of the Castberg Law and in 1919 published a report by Professor Ernst Freund on *Illegitimacy Laws of the United States and Certain Foreign Countries*. As this excellent analysis of legislation is now out of print and hence not readily available to students, long extracts from it have been included in the documents (p. 512). In 1920 the Bureau organized a regional conference on illegitimacy in Chicago and New York and published the recommendations agreed upon at these conferences.² Later it made studies of the experience of agencies dealing with the problem in a number of cities and the obstacles which the law raised to the development of sound case-work procedure for insuring to these children a reasonable chance for success in life. An Inter-City Conference was very active in Massachusetts during this period, and Prentice Murphy kept the subject before the public in Philadelphia.

In 1921 Professor Ernst Freund presented to the National Conference of Commissioners on Uniform State Laws—an organization

¹ The North Dakota law was later amended to bring it into general conformity with the "uniform illegitimacy law." See p. 501.

² *Standards of Legal Protection for Children Born Out of Wedlock: A Report of Regional Conferences Held under the Auspices of the U.S. Children's Bureau and the Inter-City Conference on Illegitimacy* (U.S. Children's Bureau Publication No. 77; 1921).

of lawyers which meets in connection with the American Bar Association—a proposal for a uniform state law on illegitimacy. The Association finally adopted in 1922 a proposed Uniform Law.¹ Mr. Freund was able to persuade the Commissioners to approve the principle that both father and mother should be liable for the support and education of an illegitimate child, but he encountered unexpected opposition to the idea that the children of marriages subsequently held null and void should be considered legitimate and firm resistance to equal rights of inheritance by illegitimate and legitimate children to the father's estate. The so-called Uniform Law which was finally approved became the basis of the laws of several states.² Its discussion and adoption by the Commissioners on Uniform State Laws served to make clear what changes in the existing laws could be made with little opposition and those for which a changed public opinion must first be secured before legislative approval could be expected.

Dependency has been increased by illegitimacy, as the mothers usually come from the lower wage-earning groups, support from the fathers is usually not available, and the amount he can be required to contribute is often inadequate.³ This is the aspect of the problem which the state first sought to solve—it was concerned not with illegitimacy and the handicaps it placed on the children but with the cost to the taxpayers of providing for their maintenance. The total volume of dependency which it creates today is not known. The census of children in agencies and foster-homes in 1933 revealed that 31,776, or 13 per cent of the 242,929 dependent children cared for away from their homes, were illegitimate.⁴ That the welfare of some of these children would have been better served if they had been left with their mothers is undoubtedly true. Separation, while sometimes in the interest of the child, is still the easiest road and

¹ This, together with a statement by Professor Freund on the proposal, is conveniently found in Breckinridge, *op. cit.*, pp. 465-76.

² Iowa, Nevada, New Mexico, New York, North Dakota, South Dakota, and Wyoming.

³ See *Illegitimacy as a Child Welfare Problem* (U.S. Children's Bureau Publication No. 75), p. 122; (Publication No. 128), pp. 53 and 169.

⁴ U.S. Bureau of the Census, *Children under Institutional Care and in Foster Homes, 1933*, Table 28, p. 43.

too frequently resorted to on that account. This is because providing security for the child on any other basis is still much more difficult than it should be.

The earlier mothers' aid laws usually excluded unmarried mothers from this form of assistance. Through the years many of these laws were liberalized so that these children could be kept with their mothers when it was found to be in the interest of the child to maintain the relationship. The definition of a dependent child in the Social Security Act makes grants to the unmarried mother possible if further restrictions are not added by the state laws or in the administrative interpretation of such general clauses in the laws, as that "the home must be suitable" or "the parent or guardian is mentally, morally, and physically capable of giving the child proper care." Of the children receiving "aid to dependent children" in twenty-nine states during the fiscal year 1936-37, the Social Security Board reports 3,479 were living with their unmarried mothers, which is only 2 per cent of the total number of children receiving this form of assistance;¹ five states² gave no aid to a child living with an unmarried mother, and four³ made grants to less than ten such children. This shows a very conservative use of aid to this group of children. That it was justified on a case-work basis seems doubtful—what is for the welfare of the child is too often not the test. Instead there is great hesitancy to undertake the case-work responsibility of maintaining this incomplete family unit.

British progress in this field has been slower than that of many of our states. Although a law along the lines of the Castberg Law was introduced in the British House of Commons in 1918, it had little support, and it was not until 1926 that the Legitimacy Act was passed (p. 590).⁴ This law, together with the Adoption Law of

¹ *Second Annual Report of the Social Security Board*, Table C 53, opposite p. 172.

² Maine, New Hampshire, Oregon, Pennsylvania, and Vermont (*ibid.*). The only state that specifically prohibits aid to a child of an unmarried mother, according to *Characteristics of State Plans* issued by the Social Security Board, December 1, 1937, is Nebraska, which is reported, nevertheless, to have granted aid to 87 in 1937, while in Pennsylvania, where they are specifically made eligible by the law, none was given aid.

³ Delaware, Montana, Rhode Island, Wyoming.

⁴ Some of the discussion in the House of Commons on this subject is conveniently found in Breckinridge, *op. cit.*, pp. 431-35.

1926 (p. 216), created four classes of children all having different status as to inheritance—(1) legitimate, (2) illegitimate, (3) legitimated, and (4) adopted children. Under this law the illegitimate child inherits the mother's property if she dies intestate and does not have legitimate children, as if he had been born legitimate, and the mother may in turn inherit from her illegitimate child. Support by the father is still under the bastardy acts, and there is a statutory limit of twenty shillings a week on the amount which the court, in what is called "an affiliation order," may require the father to pay.¹ The legitimated child, while he cannot succeed to any honor or title, is in a better position than the adopted child, as the former inherits from his legitimated parents as does a legitimate child if his parents die intestate, while the latter does not. While the English law does not permit the legitimation of illegitimate children born when the parents were not legally able to marry, it is possible after a subsequent marriage for the parents to adopt such children.² As the legitimacy and adoption bills were debated over the same general period and came into effect at the same time, it may be that Parliament had this solution in mind.

The League of Nations through its Commission on the Welfare of Children and Young Persons has made available information as to the status of the illegitimate children under the social insurance laws of most of the countries of the world and the social measures that have been taken to protect them. The system of guardianship which has been carefully developed in Austria, Germany, Switzerland, and Sweden is of great interest (p. 595).

Mrs. Mildred D. Mudgett, who looked into the system of care in a number of European countries in 1926, has given facts of interest to social workers that the League of Nations report does not undertake to supply.³ In Austria, for example, the general administration was in the Ministry of Social Welfare, which included health, social insurance, labor, and child welfare. Child welfare services in

¹ The Bastardy Act of 1923 (13 & 14 George V, c. 23). W. Clarke Hall gives a brief summary of existing bastardy legislation in Great Britain (*The Law of Adoption*, pp. 99 and 100).

² Hall, *op. cit.*, p. 140.

³ "For Unmarried Mothers in Europe," *Survey*, LVII (March 15, 1927), 809-11.

Austria, it should be noted, had their beginning in the care of illegitimate children and were extended later to include care for other neglected and dependent children. As more than one-fourth of the births in Austria were illegitimate, the number of children for whom the state assumed guardianship under this program was very large. Mrs. Mudgett reported that in Vienna, a city of approximately three million population, there were thirteen district offices of the *Jugendamt*—the local child welfare organization. Their case loads were from one hundred fifty to two hundred, and one-half were illegitimate children. When paternity was established the father was required to pay 15 per cent of his wages for the support of the child until he was fourteen or had finished elementary school. The *Jugendamt* collected the money and supervised its expenditure. Paternity is usually established with much less difficulty in Austria than in the United States. In Austria only about one-fifth of the fathers contested the action, while in Minnesota, where a more consistent and thorough effort has been made to establish paternity than in any other American state, paternity was established for 25.1 per cent of the illegitimate children born between 1932 and 1934.¹

In contrast with the Teutonic countries, provision for illegitimate children was largely in the hands of private agencies in Italy until 1937. At that time the Fascist government—interested perhaps in soldiers and the mothers of future soldiers—adopted a program which requires the provincial governments to provide assistance for children whose parentage is unknown and children born out of wedlock who are recognized by the mother.² France now provides for investigation of paternity,³ and public resources for care of the children have increased in recent years. In Tsarist Russia, as in Western European countries, the illegitimate child was the child of no one, until in 1902 it became the child of its mother. With the adoption of the 1918 Family Code by the Soviet government, the legal dis-

¹ *Eighteenth Biennial Report of the State Board of Control of Minnesota, Period Ended June 30, 1936*, p. 51.

² Pietro Corsi, *Protection of Maternity and Child Welfare in Italy* (Società Editrice di Novissima, Roma A. XIV), pp. 51-57.

³ In 1912 provision was made for judicial determination of paternity subject to special provision as to admissible evidence by amendment of Article 340 of the Code. See Crane Brinton, *op. cit.*, p. 67.

inction between the legitimate and illegitimate child was abolished. Both parents were required to provide equally for the support and education of all their children.¹ While Russia has been said to have abolished illegitimacy and the handicaps which it inflicted on innocent children by this law, this cannot be wholly accomplished by legislative fiat. Their handicaps can be reduced by providing adequate care and maintenance and a more just point of view about them; but legal recognition of property rights and parenthood is no substitute for the benefits to a child of normal family life—which, when either parent has another family, is denied them.

It seems unnecessary to point out that special provision by the state for the care and protection of illegitimate children is needed, because they are so frequently dependent, their mortality rate is usually nearly double that of legitimate children,² they are very often exposed to a demoralizing environment, the mother is not in a position to protect them, or their interests are ignored by her as well as by the father. It is because of the latter fact that decision as to establishment of paternity cannot be left to the mother, and the state must be a party to any compromise settlement between the mother and the father on behalf of her and the child, and that the money paid by the father should be received and disbursed on behalf of both by the state. It is because of these facts that adequate provision must be made for these children by the state.

Adequate social provision for illegitimate children can be made by no single method of treatment. Some must be removed from the custody of the mother, but, when she is not without the necessary intelligence and character, the preservation of the blood tie is in

¹ John N. Hazard, "The Child under Soviet Law," *University of Chicago Law Review*, V (April, 1938), 425-27.

² The Vital Statistics Division of the Census Bureau does not publish mortality rates of legitimate and illegitimate children. This statement is based on studies of the U.S. Children's Bureau which revealed that in Boston in 1914 the death-rate of children born out of wedlock was three times as high as those born in wedlock; in Milwaukee 1916 to 1917, 2.3 times as high and in Baltimore in 1915, 2.8 times as high (Publication 75, *Illegitimacy as a Child-Welfare Problem—Part II, A Study of Original Records in the City of Boston and in the State of Massachusetts*, p. 89; Publication 128, *Illegitimacy as a Child-Welfare Problem—Part III, Methods of Care in Selected Urban and Rural Communities*, p. 96; Publication 119, *Infant Mortality—Results of a Field Study in Baltimore, Md., Based on Births in One Year*, p. 170).

the interest of the child and society. In general, the duty of caring intelligently and adequately for these children has not been accepted by the states; and as the number of illegitimate births is increasing, the social aspects of the problem grow more serious. For reversing the trend so as to reach the irreducible minimum in such births, basic improvements in social and economic conditions and in our system of education and training are necessary. In the meantime it is the duty of the state to provide as far as possible equality of opportunity instead of making success in life more difficult for these children by legal handicaps.

GRACE ABBOTT

1. Blackstone on the English Law

SIR WILLIAM BLACKSTONE: COMMENTARIES ON THE LAWS OF ENGLAND
IN FOUR BOOKS,¹ BOOK I, CHAP. XVI, "OF PARENT
AND CHILD"

ILLEGITIMATE CHILDREN

We are next to consider the case of illegitimate children, or bastards; with regard to whom let us inquire, 1. Who are bastards. 2. The legal duties of the parents towards a bastard child. 3. The rights and incapacities attending such bastard children.

1. Who are bastards. A bastard, by our English laws, is one that is not only begotten, but born, out of lawful matrimony. The civil and canon laws do not allow a child to remain a bastard, if the parents afterwards intermarry: and herein they differ most materially from our law; which, though not so strict as to require that the child shall be *begotten*, yet makes it an indispensable condition, to make it legitimate, that it shall be *born*, after lawful wedlock. . . . For, if a child be begotten while the parents are single, and they will endeavour to make an early reparation for the offence, by marrying within a few months after, our law is so indulgent as not to bastardize the child, if it be born, though not begotten, in lawful wedlock; for this is an incident that can happen but once, since all future children will be begotten, as well as born, within the rules of honour and civil society. . . .

2. Let us next see the duty of parents to their bastard children, by our law; which is principally that of maintenance. For, though bastards are not looked upon as children to any civil purposes, yet the ties of nature, of which maintenance is one, are not so easily dissolved: and they hold indeed as to many other intentions; as, particularly, that a man shall not marry his bastard sister or daughter. The civil law, therefore, when it denied maintenance to bastards begotten under certain atrocious circumstances, was neither consonant to nature, nor reason; however profligate and wicked the parents might justly be esteemed.

¹ 12th ed.; with notes and additions by Edward Christian; London, 1793.

The method in which the English law provides maintenance for them is as follows. When a woman is delivered, or declares herself with child, of a bastard, and will by oath before a justice of peace charge any person as having got her with child, the justice shall cause such person to be apprehended, and commit him till he gives security, either to maintain the child, or appear at the next quarter sessions to dispute and try the fact. . . . And if such putative father, or lewd mother, run away from the parish, the overseers by direction of two justices may seize their rents, goods, and chattels, in order to bring up the said bastard child. Yet such is the humanity of our laws, that no woman can be compulsively questioned concerning the father of her child, till one month after her delivery: which indulgence is however very frequently a hardship upon parishes, by giving the parents opportunity to escape.

3. I proceed next to the rights and incapacities which appertain to a bastard. The rights are very few, being only such as he can *acquire*; for he can *inherit* nothing, being looked upon as the son of nobody; and sometimes called *filius nullius*, sometimes *filius populi*. Yet he may gain a surname by reputation, though he had none by inheritance. All other children have their primary settlement in the father's parish; but a bastard in the parish where born, for he hath no father. . . . The incapacity of a bastard consists principally in this, that he cannot be heir to any one, neither can he have heirs, but of his own body; for, being *nullius filius*, he is therefore of kin to nobody, and has no ancestor from whom any inheritable blood can be derived. . . . A bastard may, lastly, be made legitimate, and capable of inheriting, by the transcendent power of an act of parliament, and not otherwise: as was done in the case of John of Gant's bastard children, by a statute of Richard the second [pp. 454-59].

2. An Act for the Maintenance of Bastard Children, Virginia, 1727

"AN ACT FOR THE BETTER SECURING THE PAIMENT OF LEVIES, AND RESTRAINT OF VAGRANT AND IDLE PEOPLE; AND FOR THE MORE EFFECTUAL DISCOVERY AND PROSECUTION OF PERSONS HAVING BASTARD CHILDREN AND FOR MAKING BETTER PROVISION FOR THE POOR," HENING: STATUTES OF VIRGINIA, IV

XII. And, whereas divers lewd women, being got with child of bastards, do oftentimes, before their delivery, absent and remove themselves from their usual places of abode, and abscond in other counties, and sometimes remove into other colonies, until the time of their delivery, and then return to their former habitations; whereby the laws made to punish such offences, are evaded, and the due course of justice for obliging the reputed fathers of such bastards to provide for their maintenance, often obstructed and prevented: For the remedy whereof for the future,

XIII. *Be it enacted, by the authority aforesaid,* That whensoever hereafter, any lewd woman shall be delivered of a bastard child, and be thereof lawfully convicted, she shall, for every such offence, be liable and compellable to pay the sum of five hundred pounds of tobacco, and cask, or fifty shillings current money of Virginia, to the churchwardens of the parish, wherein she shall be delivered: Which shall and may be recovered, with costs, by action of debt, bill, plaint, or information, in any court of record within this colony; wherein no essoin, protection, or wager of law, shall lie, or any more than one imparlance. Which fine, recovered as aforesaid, shall be accounted for, by the churchwardens, to the use of the said parish. And if any person or persons offending herein, shall refuse or fail to make present payment, or give sufficient security for the payment of such fine at the laying of the next parish levy after such conviction, every person so refusing or failing, shall receive on her bare back, at the public whipping-post, twenty-five lashes, well laid on.—And in either of the cases, of paying the fine, or whipping, the said woman shall be discharged of all further or other prosecution.

XIV. *And be it further enacted, by the authority aforesaid,* That the person or persons in whose house such woman shall be delivered, upon such delivery shall give notice thereof, to the churchwardens of the parish, or to one of them, wherein such child shall be born:

And if the person in whose house the said woman shall be delivered, shall neglect or fail to give such notice, or to secure the person of the woman so offending until such notice given, or suffer her to escape, that then the person in whose house such delivery shall happen, shall forfeit and pay the sum of five hundred pounds of tobacco, or fifty shillings current money; for the use of the poor of the parish where he or she shall dwell: to be recovered as aforesaid. And in case of non-payment, or refusal, to give security for the payment thereof at the next parish levy, to receive twenty-five lashes on the bare back as aforesaid [pp. 213-14].

3. Kent on the American Law

JAMES KENT: COMMENTARIES ON AMERICAN LAW,¹ PART IV
LECT. XXIX, "OF PARENT AND CHILD"

Of illegitimate children.—I proceed next to examine the situation of illegitimate children, or bastards, being persons who are begotten and born out of lawful wedlock.

These unhappy fruits of illicit connection were, by the civil and canon laws, made capable of being legitimated by the subsequent marriage of their parents; and this doctrine of legitimation prevails at this day, with different modifications, in France, Germany, Holland, and Scotland. But this principle has never been introduced into the English law; and Sir William Blackstone has zealously maintained, in this respect, the superior policy of the common law . . . [II,* 208-9].

But not only children born before marriage, but those who are born so long after the death of the husband as to destroy all presumption of their being his; and, also, all children born during the long and continued absence of the husband, so that no access to the mother can be presumed, are reputed bastards. . . . The rule is, that where it clearly appears that the husband could not have been the father of the child, it is a bastard, though born, or begotten and born, during marriage. . . .

A bastard being in the eye of the law *nullius filius*, or, as the civil law, from the difficulty of ascertaining the father, equally con-

¹ (14th ed.; ed. John M. Gould; Boston: Little, Brown & Co., 1896.) The *Commentaries* were first published in 1826-30.

cluded, *patrem habere non intelliguntur*, he has no inheritable blood, and is incapable of inheriting as heir, either to his putative father, or his mother, or to any one else, nor can he have heirs but of his own body. This rule of the common law, so far at least as it excludes him from inheriting as heir to his mother, is supposed to be founded partly in policy, to discourage illicit commerce between the sexes. Seldon said, that not only the laws of England, but those of all other civil states, excluded bastards from inheritance, unless there was a subsequent legitimization. Bastards are incapable of taking in New York, under the law of descents, and under the statute of distribution of intestates' effects; and they are equally incapable in several of the other United States, which follow, in this respect, the rule of the English law. But in Vermont, Connecticut, Virginia, Kentucky, Ohio, Indiana, Missouri, Illinois, Tennessee, North Carolina, Alabama, and Georgia, bastards can inherit from, and transmit to, their mothers, real and personal estate, under some modifications, which prevail particularly in the states of Connecticut, Illinois, North Carolina, and Tennessee; and in New York, the estate of an illegitimate intestate descends to the mother, and the relatives on the part of the mother. . . .

This relaxation in the laws of so many of the states, of the severity of the common law, rests upon the principle that the relation of parent and child, which exists in this unhappy case, in all its native and binding force, ought to produce the ordinary legal consequences of that consanguinity [pp.* 210-14].

The mother, or reputed father, is generally in this country chargeable by law with the maintenance of the bastard child; and in New York it is in such way as any two justices of the peace of the county shall think meet; and the goods, chattels, and real estate of the parents are seizable for the support of such children, if the parents have absconded. The reputed father is liable to arrest and imprisonment until he gives security to indemnify the town chargeable with the maintenance of the child. These provisions are intended for the public indemnity, and were borrowed from the several English statutes on the subject; and similar regulations to coerce the putative father to maintain the child, and indemnify the town or parish, have been adopted in the several states [pp.* 215-16].

4. The Illegitimate Child in British and American Law Prior to 1919

ERNST FREUND: ILLEGITIMACY LAWS OF THE UNITED STATES AND
CERTAIN FOREIGN COUNTRIES (U.S. CHILDREN'S BUREAU
PUBLICATION NO. 42; WASHINGTON, D.C., 1919)

COMMENT ON THE ILLEGITIMACY LAWS OF THE UNITED STATES

Statutes relating to illegitimacy must be read in connection with the common law upon that subject. The common law as well as the interpretation of the statutes is found in the judicial decisions. The English decisions will be found collected in Halsbury's *Laws of England*, Vol. II, title, "Bastardy;" the American decisions in the *Corpus Juris* of the American Law Book Co., Vol. III, title, "Bastards" (written by Edward C. Ellsbree).

The common law of England, which is also the American common law, is more unfavorable to the illegitimate child than the civil law of Rome, on which the continental legal systems are based, mainly in two respects: It does not recognize a legal relationship even between the mother and the child and it does not allow legitimation by subsequent marriage. The bastard is described as *filius nullius*, and this designation characterizes his status from the point of view of the law of property. The natural relationship is, however, recognized for the purpose of applying the law prohibiting marriage within the degrees defined by law (*R. v. Brighton*, 1 B. & S. 447, 1861), and the natural claims of the mother are given effect in determining the right to the custody of the child (*Queen v. Nash*, 10 Q.B. 454, 1883), the intimation thrown out by an English judge in an earlier case (*re Lloyd*, 3 M. & G. 547, 1841) that the mother is not different from any stranger, being repudiated in the later decision.

English legislation has done nothing to alter the civil status of the child, but has confined itself to what may be described as measures of police. The legislation of Queen Elizabeth (1576), in addition to certain correctional provisions (see Blackstone, Bk. IV, p. 65), introduced the system of compelling support by the father, which has remained the main feature of the English bastardy law, and which has been taken over by the American States. The duty of the mother

to maintain the child was established by the poor law amendment act of 1834 (4 & 5 William IV, c. 76, sec. 51). The law relating to support by the father (bastardy or affiliation proceedings) was amended by a number of statutes, the last of which was enacted in 1918. The workmen's compensation act of 1906 gives the benefit of its provisions to illegitimate dependents and parents or grandparents dependent upon illegitimates. An act of 1858 (21 & 22 Vict., c. 93) permits proceedings for a decree declaring the petitioner to be the legitimate child of his parents, but without in any way touching the substantive law or the law of evidence concerning legitimacy, so that the act has no bearing upon the law of illegitimacy.

American legislation has been more active. The English type of bastardy-support legislation has been taken over by nearly all the States and continues to be the dominant feature of our laws concerning illegitimates. In contrast to England, however, there has been also considerable legislation concerning the status and the civil rights of illegitimates. In part this legislation undertakes merely to enact rules of the common law, the acts laying down the presumptions regarding illegitimate birth being of that character. In part the legislation alters the common law by establishing rules more favorable to legitimates. As early as 1785 Virginia introduced the three reforms most conspicuous in this respect: Making the issue of certain annulled marriages legitimate; adopting the civil-law principle of legitimation by subsequent matrimony; and creating rights of intestate succession between the illegitimate child and the mother. It is remarkable that the neighboring State of North Carolina should not have adopted the second of these principles until 1917, New Jersey not until 1915, New York not until 1895; but the three reforms have become law in most of the States, with various modifications. Until recently there has been little legislation bearing on the status of the illegitimate child with reference to the father or greatly altering the father's obligations; the last few years have, however, witnessed some important changes in this respect, and radically new departures were undertaken in two States in 1917. The stagnation of legislative thought on this important subject which characterized most of the States during the greater part of the nineteenth century appears to have come to an end, but the

lines that are likely to be taken by new legislation are not clearly marked out.

The following brief analysis of American illegitimacy legislation attempts merely to outline its main features.

The subject will be considered under the following heads: Illegitimacy in relation to marriage and birth; the illegitimate child and the mother; the illegitimate child and the father. Bastardy-support legislation naturally connects with the third of these categories.

I. ILLEGITIMACY IN RELATION TO MARRIAGE AND BIRTH

The child born out of wedlock, and the presumption of legitimacy.—The problem of illegitimacy is mainly concerned with children born of unmarried mothers. However, the law recognizes the possibility that the child of a married woman is not the child of her husband and therefore illegitimate. There is by the common law a strong presumption that a child born of a married woman is the child of her husband and therefore lawful. The presumption is not indisputable, and contrary proof is admitted now somewhat more readily than it was under the earlier law, when it was contended that nothing short of the husband's absence beyond the seas during the period of conception or his apparent incapacity for procreation would suffice to overcome the presumption (Coke on Littleton, 244a). At present it is sufficient to prove that the husband did not have intercourse with his wife during the relevant period, while it is not sufficient to prove that other men had intercourse with her at the time. On general principles of the law of evidence, however, neither husband nor wife may testify as to the fact of intercourse or non-intercourse, but the proof must be furnished by other means.

The matter of presumption is dealt with by statute in a number of States. Louisiana appears to have the fullest provisions in that respect. Georgia (Code, sec. 3012) expresses the rule of the common law by providing:

All children born in wedlock, or within the usual period of gestation thereafter, are legitimate. The legitimacy of a child thus born may be disputed. Where possibility of access exists, except in cases of divorce from bed and board,² the strong presumption is in favor of legitimacy, and the proof should be clear to establish the contrary . . . [pp. 9-11].

² A child conceived after judicial separation from bed and board is not covered by the presumption of legitimacy. (Halsbury, Vol. II, sec. 720.)

Child born before the marriage of the parents.—It is the fact of birth, and not of conception, out of wedlock that renders issue illegitimate. A child born after marriage is legitimate though it is evident that it was conceived before, subject to the proof of illegitimacy, as in other cases.

A child born before marriage, according to the common law of England, is not legitimized by the marriage of the parents.¹ In 1235 the Parliament of Merton repudiated the civil and canon law doctrine of "*legitimatio per subsequens matrimonium*," declaring "*nolumus leges Angliæ mutari*."

Legitimation by subsequent matrimony has been introduced by statute in many American States. A number of the statutes express the requirement, which in any event must be implied, that the child, in order to be legitimized, must be acknowledged or recognized as his own by the person marrying the mother, or that the mother shall marry the reputed father (North Carolina). The provision that the child is legitimated by the father adopting him into his family (Oklahoma) will regularly be satisfied by the father marrying the mother. In a few States (Colorado, Maine, Kansas) marriage of the parents with acknowledgement of the child, or acknowledgement alone (South Dakota), gives the latter a right of inheritance without in terms legitimating him. Rhode Island, Delaware, South Carolina, and Tennessee seem as yet to lack such provision for legitimation. The desirability of such legislation is obvious. Legitimation is preferable to giving merely a right to inheritance, since it takes care of the duty of support. The right of inheritance, in case of legitimation by subsequent marriage, is peculiarly qualified in Nebraska, where it is given only if the parents have other children; until 1914, in New Jersey, it was given only if the parents had no legitimate children.

Issue of void and voidable marriages.—The difference between void and voidable marriages—a matter involved in much difficulty, owing to the operation of statutes upon canon-law and common-law doctrines—is of importance with reference to the status of the offspring. The issue of a void marriage is illegitimate. Bigamous marriages and marriages vitiated by lack of mental capacity are instances in point. If a voidable marriage was annulled by judicial decree, it

¹ [See change made by Act of 1926, p. 590.—EDITOR.]

was regarded as void *ab initio* and the issue was likewise illegitimate. However, the common law would not allow a voidable marriage to be annulled after the death of one of the parties (1 Blackstone, 434 Salkeld, 548), and death would thus make it impossible to question the status of issue which to all intents and purposes became legitimate.

Voidable marriages were not only those concluded under fraud or duress but also those within the prohibited degrees of consanguinity or affinity. An act of 1835 (5 & 6 W. IV, ch. 54), however, rendered all marriages between persons within the prohibited degrees of consanguinity or affinity "absolutely null and void to all intents and purposes whatsoever," with the effect of bastardizing the issue.

In America marriages within the prohibited degrees are generally declared by statute to be void and not merely voidable. In the absence of saving legislation the issue of these marriages must therefore be held illegitimate, as well as the issue of voidable marriages annulled by judicial decree.

Legislation legitimating the issue of void or annulled marriages.—Legislation legitimating the issue of void or annulled marriages is common in America, and is of more or less extensive scope . . . [pp. 12-13].

Legislation declaring the issue of certain marriages illegitimate.—There is, on the other hand, legislation expressly declaring the issue of certain illegal marriages illegitimate:

a) In case of incestuous marriages or marriages within the prohibited degrees in Massachusetts, Maine, New Hampshire, Vermont, Michigan, Hawaii, and Rhode Island.

b) In case of marriages between persons of different race in Florida, Kentucky, and Nebraska.

c) In case of bigamous marriages in Florida, and, if the same have been annulled, in New Jersey and Kentucky.

d) The law of Illinois has a saving of the issue of divorced marriages except in case of bigamy; the provision for divorce does not apply to incestuous marriages, for which likewise there is no saving provision.

The law of Louisiana.—The law of Louisiana is altogether peculiar. A distinction is made between the illegitimate offspring of persons who at the time of conception might have legally contracted marriage with each other and the offspring of persons to whose marriage

there existed at the time some legal impediment (art. 181). The latter are designated as adulterous or incestuous bastards. Adulterous or incestuous bastards are not legitimated by subsequent marriage (which is possible where the connection was not incestuous), nor can they attain through acknowledgment the status of "natural children" (202-4), nor can they be adopted (214). Even the right of alimony apparently exists only against the mother and her descendants (art. 245; but see arts. 242 and 920). It follows from these provisions that the issue of marriages void either by reason of bigamy or of relationship, so far from having a preferred status, are stigmatized beyond redemption. This is the reverse of the policy adopted by most other States . . . [p. 14].

2. THE ILLEGITIMATE CHILD AND THE MOTHER

The dependent status of the married woman at the common law resulted not only in the absolute dormancy of any legal rights of the mother during the lifetime of the father but exerted its influence even after his death; for the father had power by deed or will to appoint a guardian for his minor children, and the statute granting or confirming this power (1670) ignored any rights of the mother. With such an attitude toward the rights of the lawful mother it is not surprising if we hear little of the rights of the illegitimate mother. She is first recognized in criminal legislation, correctional measures being provided for by statutes 18 Eliz.c.3, and 7 James I, c.4 (Blackstone, IV, 65). An act of 1623 made it punishable as murder if a lewd woman concealed the birth of her child and the child was found dead, unless she proved that it had been born dead. (Stephen, *History of Criminal Law*, III, 118.) The concealment of the birth and death of a child has since been made an offense without reference to illegitimacy. (Criminal law amendment act, 1828, sec. 14.) The poor law amendment act of 1834 gave the illegitimate child the settlement of the mother and imposed upon her a duty of support and her neglect to maintain the child when able to do so, whereby the child becomes chargeable on the parish, is punishable. (Poor law amendment act, 1834.) The English statute does not appear to recognize other reciprocal rights and obligations between mother and illegitimate child until the workmen's compensation act of 1906,

which takes care of actual dependency though based on illegitimate parentage.

The mother's custody of the child was recognized by the court from the end of the eighteenth century where the child was taken from her by force or fraud, a grant of *habeas corpus* under such circumstances not necessarily implying a legal right in her to the person of the child. (*R. v. Soper*, 5 Term R. 278, 1793; *R. v. Hopkins*, 7 East 579, 1806.) But in 1883 the court of appeal conceded that the natural relationship gave rise to a right of custody. (*Queen v. Nash*, 10 Q.B. 454.)

The English law has never admitted any right of intestate succession between mother and illegitimate child.

For America we must assume the continued existence of the English common law (unaffected by English statutes) in the absence of proof to the contrary.

The courts of Connecticut have held that by the custom of that Colony and State the relation of the mother to the illegitimate child is substantially the same as to a lawful child, carrying with it rights of inheritance, and enabling the child to take under gifts to the issue of the mother, if "lawful" issue is not expressly specified. (5 Conn. 228, 6 Conn. 35, 12 Conn. 165, 88 Conn. 269.) No such change of custom has been asserted for any other jurisdiction, but a legal relation between mother and child seems to be tacitly assumed. Georgia, where the common law is in a manner codified, declares the mother to be the only recognized parent of the illegitimate child (3028).

American legislation has, however, recognized the relation between mother and illegitimate child in such a manner as to approximate the status to that of lawful parent and child. In this departure it had no English models to follow; the English legislation regarding concealment of birth and death—either confined to illegitimates or generalized—has, however, been generally taken over into our criminal codes. The most important statutory change of the common law is that relating to the right of inheritance; there are in addition scattered provisions relating to custody, guardianship, apprenticeship, and adoption to be noted.

Right of inheritance.—The statutes naturally distinguish the right

to inherit from the illegitimate child and the right to inherit from the illegitimate mother, the latter right being not so commonly granted as the former. Thus, New York in the Revision of 1828, while giving the mother the right to inherit from the child, expressly declared the illegitimate incapable of inheriting (1 R.S. 753, 754, secs. 14, 19), while Massachusetts in the same year established reciprocal rights, as Virginia had done as early as 1785.

The States differ as regards the right to inherit from the kindred of child or mother as the case may be, and the statutes of each State must be consulted on this point . . . [pp. 17-19].

A particular problem is presented in adjusting succession rights of or from illegitimates to claims of lawful relatives: Should illegitimate children take from the mother when she has lawful children, and should they take what the mother has received from her lawful husband? Should illegitimate children take only from other illegitimate children or also from her lawful children? . . . [p. 19].

3. THE ILLEGITIMATE CHILD AND THE FATHER

In general.—As before stated, the relation between the father and the illegitimate child is recognized by the common law in one respect, namely, for the purpose of counting the degrees within which marriage is prohibited. (*R. v. Brighton*, 1 B. & S., 447.) American statutes have adopted this principle by making the law regarding incestuous marriages apply to illegitimate as well as legitimate relationships. Knowledge of the relationship is not required to invalidate the marriage, though it probably is for the purpose of treating incest as a crime.¹ For all other purposes the father and the child are by common law strangers to each other. A father may receive an illegitimate child into his family and treat it as his own and he may remember it by will, but if he gives to his children by a named woman, not his wife, generally, so as to include children other than those recognized by him as such at the time of the will, the gift is held in England to be void for uncertainty, since the law will not inquire whether children born by a woman through illicit intercourse are born of this or that particular man. For this civil purpose,

¹ Expressly so provided in English punishment of incest act, 1908, sec. 1. This act also applied to illegitimate relationship (sec. 3).

then, the English law adopts the principle of the French Code, superseded only in 1912, that inquiry into paternity will not be undertaken. The will may, however, give to the children of the woman, or even to the children of the woman who are reputed to be the testator's, since the testator's actual paternity in that case is irrelevant. (*Hastie's Trusts*, 35 Ch.D., 728.)

The statute law of England takes cognizance of the relation between father and illegitimate child only in the bastardy support legislation, to be more fully noted presently, and the workmen's compensation act of 1906 (sec. 13).¹

American legislation.—(a) *Legitimation.*—While most American States provide for legitimation of illegitimate children by the marriage of the parents, only a minority of States permit legitimation without such marriage. Such provision may be desirable where the death of the mother prevents a marriage to the father.

Legitimation where permitted is either formal or informal; if formal, either through a judicial proceeding or without one.

Legitimation by judicial proceeding is found in Alabama, Georgia, Mississippi, North Carolina, and Tennessee. The method is a simple petition for a decree or order legitimating the child, and, if so desired, giving him the name of the father; the latter consequence, it seems does not need special provision. . . . [pp. 21-22].

In Michigan legitimation is effected by a writing executed and recorded like a deed; the child becomes legitimate to all intents and purposes. In Louisiana legitimation requires a notarial act.

California illustrates the type of informal legitimation: "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth" . . . [pp. 22-23].

Where no provision is made for legitimation (i.e., in the majority

¹ The national insurance act, 1911, defines dependents as including such persons as the approved society or insurance committee shall ascertain to be wholly or in part dependent upon his earnings (sec. 79). The war-pension legislation likewise speaks of "dependents."

of States), practically the same effect can generally be accomplished by adoption. (See, e.g., Vermont, sec. 3757.) Adoption may have the advantage of not disclosing the fact of illegitimate parentage and birth, which outweighs the theoretical benefit of removing the stain of illegitimacy by formal legitimation. If adoption may leave the child outside the scope of gifts made to the issue of the adopting person, the same doubt may arise in case of legitimation, for it is not clear that a gift to the lawful issue of a person would apply to legitimated issue.

A difficulty exists under adoption laws like that of Illinois where a person may adopt only a child not his own. Here there is no way of giving the illegitimate child a better status after the mother has died. An act of Illinois of 1915 expressly allows a person to adopt the child of his wife, but the difficulty with regard to the illegitimate child is not removed . . . [p. 23].

b) *Rights of inheritance*.—Some States give, without express legitimation, a right of inheritance to a child in case of acknowledgment by the father. California attaches this effect to an acknowledgment in writing, but so that the child does not represent the father in inheriting from the latter's kindred.

Kansas grants this right as follows: "[Illegitimate children] shall inherit from the father whenever they have been recognized by him as his children; but such recognition must have been general and notorious, or else in writing" (3845). The provision in New Mexico is the same. Iowa, and since 1917 also Wisconsin, add to the latter provision a right to inherit from the father whose paternity has been proved during his lifetime, but in Wisconsin (as in California) the child does not inherit as representing the father.

In these States, if the recognition is mutual the right of inheritance is reciprocal, but in Kansas and New Mexico the mother is preferred as an heir to the father.

South Carolina recognizes legitimation by adoption. In that State a father who has a wife or lawful children may not as against them give or bequeath to an illegitimate child more than one-fourth part of his estate, and this restriction also applies after the child is adopted, and is in that event extended to the child's right to inherit (3454, 3575, 3798) . . . [pp. 23-24].

In Minnesota, by a law of 1917 (ch. 222), the father of an illegitimate child, who has acknowledged paternity in writing or against whom the fact of paternity has been adjudged, is entitled to notice in proceedings for the adoption of the child.

The statutory provisions relating to the illegitimate father make it clear that the law does not recognize the normal relation of parent and child as subsisting between him and the child.

It follows that abandonment acts which speak of a child or minor child, and do not expressly refer to the illegitimate child, do not apply to the latter: so held in New York (*People v. Fitzgerald*, 167 App. D. 85); District of Columbia (*Moss v. U.S.* 29 App. D.C. 188). . . .

It is finally necessary to notice the radically new legislation of North Dakota, enacted in 1917, which declares every child the legitimate child of its natural parents, but apparently limits this broad principle by the failure to provide equally broad remedies; for the law provides that the mother may within one year from the birth of the child sue to establish paternity, and makes the mother incompetent as a witness if the father is dead. . . . The limitation can certainly have only the effect of embarrassing and throwing doubt upon the operation of the main provision of the act. North Dakota also provides (1915, ch. 183, sec. 8) that an illegitimate child born in a maternity hospital shall be given the name of the father, if known [p. 25].

5. Illegitimacy Legislation in Norway

A. NORWEGIAN LAWS CONCERNING ILLEGITIMATE CHILDREN (U.S. CHILDREN'S BUREAU PUBLICATION NO. 31; WASHINGTON D.C., 1918). INTRODUCTION BY LEIFUR MAGNUSSON

Early legislation on illegitimacy.—The natural effect of placing the entire burden of care of the illegitimate child upon the mother was to throw most illegitimate children upon the poor-relief system, so that the first effort of legislation, about the middle of the eighteenth century, aimed to shift the economic burden partially upon the father. This was done at first by a few local authorities, and later by the General Government in 1763, when a royal decree was promulgated compelling contribution from the father to the extent of one-half of the amount fixed by the poor commission as necessary for the

child's support up to its tenth year. Support was extended to the fifteenth year in 1821; and forced collection of contributions, garnishment of wages, and the penalty of hard labor became recognized as instruments in the enforcement of the law. A special process for the adjudication of paternity was established at the same time, but any action taken for an adjudication was on the initiative of the mother and not of the State.

No rights of succession in relation to the father were given to illegitimate children until 1915 except in so far as the father might legitimate the child.

In 1884 two members of the Storting¹ introduced personal bills, as distinguished from Government bills, to equalize the inheritance rights of legitimate and illegitimate children by giving the latter the right of succession in the father's line, but no action was taken. On the two bills on the same subject introduced in 1887 action was taken to the extent of referring them to the Government. The Government, however, thought the occasion inopportune—this was in 1892—on the ground that society was not prepared to accept such reforms; but at the same time admitted that conditions in respect to illegitimate children were unsatisfactory and had been so for years.

Acts of July 6, 1892.—The bill introduced in 1887 formed the basis of the acts of 1892 (Nos. 4 and 5). By these acts two reforms were secured: (1) Fixing the obligation on the part of the parents of an illegitimate child to contribute in proportion to their means—the parent having the larger means to contribute relatively more—and not in proportion to the minimum requirements of bare economic support for the child; and (2) giving the right of inheritance and transmission through the mother's line to a child born of adultery or incest.

A bill introduced about the same time to extend the rights of inheritance and transmission to an illegitimate child through the line of the father was voted down in the lower house (Odelsting), 43

¹ The Storting is elected as a unicameral legislature representing the people in different constituencies. When it convenes it divides itself into two bodies, an Odelsting of three-fourths of the members chosen, and a Lagting of one-fourth of the total members. The Lagting is mainly a revisional body or committee.

to 32; it was even refused reference to the Government for report and action by a vote of 45 to 31.

Legislative proposals and reforms, 1892 to 1915.—The outstanding events in this period are the part taken by organized labor in furthering the movement for the enlarged rights of illegitimate children and the persistent advocacy and sponsoring of the reform by Councillor of State Johan Castberg, whose name has become identified with the law. No proposals to extend the obligation of maintenance were made in the Storting until 1901; and no changes in the inheritance law were suggested until 1909.

The Labor Convention of 1901.—The renewed attention in the Storting given the subject of illegitimacy was the direct result of a resolution, accompanied by the draft of a bill, passed in February, 1901, by the annual convention of the Norwegian labor federation. The executive council of the federation presented the bill through the Government ministry and it was reported by the committee on labor of the lower house. The resolution, introduced in the convention by Representative Castberg, declared among other things, "that the woman in the relations which are the basis for this law is more disadvantageously situated than the man, and that she and the child need greater protection and a more liberal and secure economic support. . . . The sorrow and misfortune which result from the relations dealt with in this legislation most frequently strike women and children of the poorer classes. For these reasons as well as for the sake of common justice and humanity, organized labor demands the reform of this legislation."

The principles of reform insisted upon in the resolution were as follows:

1. It is the duty of the father to give equal support to both his legitimate and illegitimate children.
2. As regards succession, the illegitimate child should inherit in the father's line equally with a legitimate child and should have an equal right to the father's name.
3. All expenses for the support and education of the illegitimate child should be upon the father.
4. The mother should be entitled to a contribution "as compensation for her loss of earning capacity resulting from the pregnancy and the child's care."
5. Contribution to the mother during pregnancy and at time of confinement should

be assessed upon the father before the birth takes place. 6. Contribution should be levied and collected without claim or demand from the mother and by the proper public authorities who should employ process to enforce their collection. 7. More stringent penalties should be invoked for failure on the father's part to meet his obligations to the mother and the child. 8. Society should improve and make more stringent the supervision exercised over neglected children.

The resolution and the draft of the law were referred to the Government, and the only action taken was to send out a questionnaire to the local authorities, county councils, courts, police judges, and others to ascertain their views on the matter. A bill to equalize inheritance rights was subsequently introduced in the 1904-5 session by Representative Castberg, but no action was taken on it, although the replies to the questionnaire showed a preponderance of opinion in favor of equality of inheritance rights.

While the department of justice had under consideration in 1906 the above proposals of Castberg, it secured an investigation by the statistical office of the living conditions of illegitimate children. With the findings of that inquiry Castberg, who became head of the department of justice in 1908, presented a group of drafts of laws to the Storting in 1909. These bills accepted the principles laid down in the resolutions of the labor federation in 1901. Discussion of these bills was, however, delayed until the advanced session of the Storting finally prevented consideration of them; they were again privately introduced in 1910, but were rejected by the conservatives, then in control. They were reintroduced by the department of justice, now under a new head, in 1912 and 1913, though in modified form.

Legislative history of the acts of 1915.—In the meantime, in 1913, the department of commerce, industries, and fisheries had been reorganized and enlarged into the department of social affairs, commerce, industries, and fisheries, embracing largely the functions of the labor departments and industrial commissions of our States and Federal Government, together with such powers as are exercised by charitable departments and social-insurance commissions, in addition to its other functions relating to commerce and industries. At the head of this department was the former minister of justice,

Johan Castberg. Through that department the Government introduced in 1914 almost the identical bills of 1909.

In presenting the proposed reforms to the Storting differences of opinion cropped out. The Government accepted the proposal to give equal standing before the law to legitimate and illegitimate children but was divided on giving them equality of succession or inheritance. Five members of the cabinet insisted only on a qualified right of inheritance from the father, and three (including Castberg) stood out for full inheritance rights as proposed in the draft bill of the department. In the committee on the judiciary in the Storting five members favored the department bill and two were against it.

In the proceedings in the Odelsting¹ that feature of the majority report which granted equal rights at law to illegitimate and legitimate children was adopted by 68 to 20 and equal right to the father's name by 47 to 41; but the right to an equal inheritance from the father was denied by a vote of 49 to 37. On the other hand, the Lagting accepted the proposition of equal inheritance by 20 to 11. The Odelsting, on second consideration of the bill, finally accepted this principle, and the law was approved by the Crown on April 10, 1915 . . . [pp. 8-11].

Administration of the laws.—The general administration of this series of laws² is by the department of social affairs, commerce, industries, and fisheries (Departementet for sociale saker, handel, industri og fiskeri), which issues orders to supplement the law and acts as a central clearing house for the information of local police courts and other authorities which are directly concerned in enforcing the law. The immediate administration of the law is through the police authorities in the counties and in the lesser rural subdivisions whose activities are in turn supervised by the amtmand³ of the larger political divisions. The amtmand appoints the police authorities referred to.

¹ [See p. 523 for statement re the Odelsting.—EDITOR.]

² [(1) Law on illegitimate children, 1915; (2) amendment to the inheritance law (July 31, 1854; June 27, 1892); (3) amendment to the laws on property relations of husband and wife (June 29, 1888; June 29, 1894; May 6, 1899); (4) amendment to the law on the dissolution of marriage (Aug. 20, 1909); (5) law on parents and legitimate children; (6) law on the care of children.—EDITOR.]

³ The amtmand is the chief political authority in the largest administrative division (amt) into which the kingdom is divided. He is appointed by the Crown.

Besides the department of social affairs, the department of justice is concerned in the administration of the act to the extent of court processes involved, the issue of citations or summonses, and punishing violations against certain provisions of the law, such as taking the child out of the country without leave, absconding, or failing to contribute.

The ecclesiastical department is concerned with the registration of births. The medical department provides the State physicians who act as chairmen of the local boards of health, whose duty it is to supervise all foster children and to oversee the activities of midwives and physicians and secure reports from them when attending births of illegitimates. Special advice on the medical and medicolegal aspects of problems connected with the adjudication of paternity may be sought from the State medicolegal commission [pp. 13-14].

B. THE CASTBERG LAW OF NORWAY

NORSK LOVTIDENDE, 2DEN AVDELING: SAMLING AV LOVE, RESOLUTIONER M.M. UTGITT EFTER OFFENTLIG FORANSTALTNING. CHRISTIANIA, 1905, 1915
TRANSLATED BY LEIFUR MAGNUSSON AND PUBLISHED BY UNITED STATES CHILDREN'S BUREAU (PUBLICATION No. 31)

LAW ON ILLEGITIMATE CHILDREN

CHAPTER I

LEGAL STATUS OF THE CHILD

SECTION 1. Par. 1. A child whose parents have not married each other shall have the same legal status, except as elsewhere provided in the law, in relation to the father as to the mother. . . .

SEC. 2. Par. 1. The child shall be entitled to bringing up—maintenance, training, and education—from both its father and its mother.

Par. 2. It shall be trained and educated in a manner befitting the economic station of the father; but if the mother is the better situated economically, then in her station. In general, in the training of the child the economic station of the most favorably situated of the parents shall be taken into account.

SEC. 3. Par. 1. The child shall remain with the mother.

Par. 2. If the mother is dead or unable to care for the child personally, or fails properly to care for it, the amtmand shall place the child in the care of the father provided the latter is able and willing

to care for it and such disposition is found to be for the best interests of the child. The same shall apply if the mother consents to the placing of the child with the father.

Par. 3. The amtmand may rescind his order and restore the child to the care of the mother if he finds special reasons for so doing and if such action is found to be for the child's welfare.

SEC. 4. Par. 1. Whichever parent, under the rules of section 3, has the care of the child shall be under the same duty to care for it as if it were legitimate. The other parent fulfills his or her duty by payment of money contributions toward its support in accordance with the rules of sections 19 and 20.

Par. 2. If the parent having the care of the child receives poor relief by reason of the failure of the other to pay the contributions, only that parent which has failed to pay shall be held to have received poor relief to the amount of the unpaid contributions.

Par. 3. If neither parent has the care of the child, both shall pay contributions toward its support. The same rule shall apply if the parent charged with the care of the child has placed it in the care of strangers and has neglected his or her obligation of maintenance; such fact shall be determined by the amtmand. . . .

CHAPTER II

ESTABLISHMENT OF PATERNITY OR OF THE OBLIGATION OF MAINTENANCE

SEC. 7. Par. 1. If the mother, prior to confinement, has failed to consult a physician or a midwife in accordance with the rules of section 6, the physician or midwife attending the delivery shall request her to state the identity of the father. Her statement shall be recorded, and if possible it shall be subscribed by her.

Par. 2. The physician or midwife shall as soon as possible report the birth to the collector. The report shall state whether the child is full term or not, and if not full term, what indications there are leading to such conclusion. It shall also state whom the mother has alleged to be the father. . . .

SEC. 8. Par. 1. The collector shall immediately forward all reports to the amtmand in accordance with the provisions of sections 6 or 7, accompanied by all information in his possession concerning the economic position of the mother and of the putative father. If the

mother is a minor, he shall immediately cause the appointment of a guardian if he considers it necessary.

Par. 2. The amtmand shall thereafter immediately issue a citation upon the putative father, in accordance with the rules of section 24.

Par. 3. Such citation shall show that if the putative father admits paternity (par. 1, sec. 13) he shall be deemed legally liable as the father.

Par. 4. The citation shall state that if he does not make such admission he must—in order to avoid being deemed liable as the father—make application within four weeks after service of the citation, either personally or by written request (registered letter) directed to the court of first instance in the jurisdiction where the mother is domiciled, to institute an action of paternity. The domicile of the mother shall be stated in the citation. . . .

SEC. 10. Par. 1. Issue of citation in accordance with section 8 may be waived at the request of the child's mother if the putative father in the presence of the collector in writing admits paternity (par. 1, sec. 13) and agrees to pay to the mother and child such contributions toward their support as shall be approved by the amtmand. The contributions must at least correspond to the amounts prescribed in sections 20 and 21 and may subsequently be changed in accordance with the rules contained in the last sentence of section 24.

Par. 2. Contributions fixed by agreement shall be collected in accordance with the rules of chapter iv if requested by the mother or by the guardian of the child in case one is appointed. . . .

SEC. 12. Par. 1. The suit shall be tried in the jurisdiction in which the mother lives and shall be considered a private police case. If the mother is dead, the suit shall be tried in the jurisdiction in which the child lives. If both mother and child are dead the case shall go to the court in the jurisdiction in which the father lives. . . .

Par. 4. Settlement of the case out of court by conciliation is prohibited. . . .

CHAPTER III

MAINTENANCE

SEC. 19. Contributions for the child's maintenance shall be paid until the child has completed sixteen years. If the father or the mother is so situated that he or she may reasonably be ordered to

make contributions to continue the education of the child beyond its sixteenth year, such order shall be entered. If the child is physically or mentally defective and by reason thereof is unable to provide for its own support, contributions shall likewise continue beyond the sixteenth year. If the circumstances render it reasonable to terminate the parental liability for maintenance when the child has completed fifteen years, the amtmand may so order.

SEC. 20. Par. 1. Contributions for maintenance shall be apportioned in such manner as to place the burden upon each of the parents proportionately to his or her means. If one of the parents is unable to bear any part of the expense, the whole thereof may be assessed upon the other parent.

Par. 2-9. [Provide for regular minimum contributions and special ones in event of sickness, etc. Minimum contributions to be increased in accordance with the means of the father.]

SEC. 21. Par. 1. The father shall pay to the mother her confinement expenses and the expense for her proper care and nursing during the confinement period; included therein shall be the prescribed fee of the physician or midwife as provided in section 6. These expenses shall be paid even if the child is stillborn, provided the demand for payment is presented to the authorities concerned within one year after confinement; otherwise the claim shall be outlawed. These expenses shall be fixed at not less than 30 crowns (\$8.04) in addition to the prescribed fee of the physician or midwife payable as provided in section 6.

Par. 2. [Provides for contributions to mother three months before confinement.]

Par. 3. [If child is stillborn first month's contribution under section 1 goes to mother.]

Par. 4. [Specifies time contribution under Par. 1 must be paid.]

SEC. 22. Par. 1. The maintenance and assistance for which the father is liable to the child and its mother shall, if the question of paternity remains undetermined, be equally binding upon the person or persons adjudged liable for contribution (par. 2, sec. 13).

Par. 2. If several persons are held liable for contributions for maintenance, the amtmand shall determine the amount each shall

pay; but each shall be severally responsible for the entire amount of the prescribed contribution.

SEC. 23. Par. 1. The guardian may not waive the child's right to maintenance.

Par. 2. If the mother desires to waive her claims under section 21, she must first obtain the consent of the amtmand.

Par. 3. The waiver of such rights shall not be binding upon a commune which in accordance with law has paid benefits and subsequently seeks reimbursement from the father or person or persons liable for maintenance.

SEC. 24. [Relates to rulings as to contributions and citations ordering payment and investigation by amtmand as to economic position of parents before making a ruling.]

CHAPTER IV

COLLECTION OF CONTRIBUTIONS

SEC. 25. Par. 1. [Contributions assessed do not become due until paternity or liability for maintenance has been established.]

Par. 2. [Provides for reimbursement if on rehearing or appeal to the court the duty of maintenance is denied.]

SEC. 26. [Duty of the collector of the domicile of the claimant to see that collection is made. Collector can require 4 per cent collection fee in case of default. Amtmand may require collector to furnish bond.]

SEC. 27. [Provides for levy of distress or garnishment of wages if necessary.]

SEC. 28. [Provisions of sec. 27 apply to wages of public employees. Treasurer to be regarded as employer.]

SEC. 29. [Banks, employers and assessors required to furnish information as to assets, wages and value of property.]

SEC. 30. [Provides for fine and imprisonment for those having means who fail to pay contributions.]

SEC. 31. [If contributions cannot be collected court may put the defendant to work for the public or with private parties.]

SEC. 32. [Relates to new trial and appointment of public defender as in criminal cases.]

SEC. 33. [Provides that expenses of travel to place of work under 31 shall be paid by the government and for wages to be paid the defendant.]

SEC. 34. [Requires those having duties to discharge under the law to give a bond if they leave the kingdom.]

SEC. 35. [Passport may be refused and goods of claimant attached.]

SEC. 36. [If putative father is acquitted he may claim civil damages from the mother.]

SEC. 37. [Crown may decide duties of those contemplating emigration.]

SEC. 38. [Provides for attachment of property in case of violation of sections 34 to 36.]

SEC. 39. Par. 1. If one of the parents (mother or father or person liable for maintenance) requests that contribution from the other party be not collected and at the same time shows that the child's support is provided for according to section 2, the collector may grant such request to such extent and for such period as he may deem advisable. In that event the guardian of the child shall be heard.

Pars. 2-4. [Relate to methods of payment.]

SEC. 40. Par. 1. If the person liable for maintenance dies before the term of his liability expires, the amount necessary to cover the balance of contributions shall be paid out of the estate after other creditors have been satisfied.

Par. 2. [Fixes time during which claim must be filed.]

Par. 3. If the deceased also leaves a widow or a legitimate child, there shall be retained from the estate no more than the child would have been entitled to if it had possessed an equal right of inheritance with a legitimate child.

Pars. 4-6. [Relate to deductions from estate for unpaid contributions and payment.] . . .

CHAPTER V

CONCLUDING PROVISIONS

SECS. 42-48. [Contain provisions regarding decisions of collector, collection of fees, forms of citations, appeals and rules governing children born before this law took effect.]

C. AMENDMENT TO THE INHERITANCE LAW (APRIL 10, 1915
AMENDING LAW OF JULY 31, 1854 AND SUPPLE-
MENTARY LAW OF JUNE 27, 1892)

SEC. 3. Par. 1. With the exception of such cases as are described in section 5, a child whose parents have not married each other shall have the same right of inheritance as a legitimate child.

Par. 2. This shall not operate to change existing rules of law affecting the right of residence and preferential purchase on division of the estate of illegitimate children in the line of the father and the father's heirs next of kin unless the father by written statement has declared that the illegitimate child shall be so entitled; in such case it shall have the same right of residence and preferential purchase as if it were of legitimate birth.

SEC. 4. Par. 1. Every child is of legitimate birth whose parents, prior to its birth, have been joined in marriage even though the marriage is annulled or is void by reason of consanguinity, or affinity, or prior marriage.

Par. 2. A child whose parents have been joined in marriage subsequent to the birth of the offspring shall be deemed legitimate.

SEC. 5. Par. 1. A child whose parents have not married each other and who was born prior to January 1, 1917, shall not inherit from the father and the father's heirs next of kin. If the father has acknowledged such a child, either orally or by written declaration, it shall inherit one-half the share which falls to a legitimate child if there is one and a full share if there is no legitimate child.

Par. 2. A child whose parents have not married each other and who are born subsequent to the date hereinbefore named shall not inherit from the father or the father's heirs next of kin unless paternity has been established in conformity with the law on children whose parents have not married each other.

SEC. 6. A child whose parents have not married each other shall transmit to the mother and the mother's heirs next of kin and the father and the father's heirs next of kin in the same manner as a legitimate child; provided said child is not itself excluded by the provisions of section 5 from the right of inheriting from them and is not born as a result of the violation by the father of any of sections 191 to 199 of the criminal law.

D. JUSTIFICATION OF THE CASTBERG LAW BY ITS AUTHOR
 "CHILDREN'S RIGHTS LAWS AND MATERNITY INSURANCE IN
 NORWAY," BY J. CASTBERG, PRESIDENT OF THE
 ODELSTING, UPPER HOUSE OF PARLIAMENT¹

The effect of legislation by men has in all countries made the women a subject class not only politically, but still more ethically and socially, in family and in marriage, and in the relation between the parents themselves and towards their children. Motherhood itself has not been protected, safeguarded, or venerated as the highest and most wonderful expression of human creative power . . . [p. 283].

The principle of the children's rights laws.—The Norwegian Children's Rights Laws are a result of this development of the woman's movement. . . . On one side the old domination of man with his contempt for "natural" motherhood; on the other side the respect for and protection of motherhood for its own sake. This principle was embodied in the law by the establishment of the equal responsibility and duty of the father and the mother towards the child, the equal right of the child towards its father and mother, the duty of the father to take care of the child's mother before, during, and after her confinement, the right of the child to be brought up according to its father's social position, if the father should be the more well-to-do of the parents, and last but not least, the duty of society to try to establish the paternity in all cases, this being an absolute contrast to the Code Napoléon: *La recherche de la paternité est interdite*.

This principle was also expressed in a simultaneous alteration of the criminal law, which makes it penal for a man to neglect a woman who is with child by him, or to leave her in a helpless or needy position . . . [pp. 284-85].

The disproportion between the responsibility placed upon the man and the woman is the more outrageous as it is due to legislation in which women have had no share, legislation exclusively by men. It is not only a wrong done to the mother and the child, but a demoralising institution, as it frees the man from his natural responsibility and thereby tempts him to recklessness in giving life to a

¹ *Journal of the Society of Comparative Legislation*, XVI (N.S.; London: John Murray, 1916), 283-90.

human being instead of regarding it as one of the most serious responsibilities in a man's life. It breaks down man's respect for women, brutalises his view of the relation between parents, and between parents and children, and in this way repudiates what is the ethical basis of marriage.

At the same time this legalised irresponsibility of the man, his legally protected anonymity, exposes the child to want and disgrace, and contributes to the feeling of these children of being singled out and disowned, and causes so many of them to go down in the struggle for life. . . .

Moreover, in other countries besides Norway, the view is now being pressed forward that the present arrangement is a repudiation of the demand for civil equality and for the equal rights and duties of man and of woman . . . [p. 286].

It [the law of 1915] is based on the fundamental principle of strengthening society by protecting motherhood and by allowing the child to be provided for and have its rights both to its father and to its mother.

The right to inherit.— . . . In 1904, the Government laid this question before all the county councils both in the country and in the towns. Most of them recommended that the rights of inheritance should be given. This was shown still more distinctly by the attitude to this question of the different parties in the Storting. The contest was not fought on the question for or against the right of inheritance of these unhappy children, but only as to what extent it should be applied. . . .

The Social Department supported by the minority of the Cabinet proposed the right of inheritance in all cases where the paternity was established either by the recognition of his paternity by the father or by the Court. This proposal was adopted by the Odelsting by 49 votes against 37 and in the Lagting by 20 votes against 11 . . . [p. 287].

What was the reason of the success of this radical alteration of the inheritance law?

Both the department's proposal and its advocates in the Storting emphasised the point that the chief end in sight was not simply that the child should obtain the economic advantage which this right of

inheritance might sometimes secure for it—in most cases the inheritance would be nothing or next to nothing. It was a demand for justice, which they wanted to grant—a demand that the child should have an equal claim before the law to its father and to its mother, subject only to the exceptions bound up “with natural causes, and with the actual state of conditions, that the parents do not live together.” These exceptions are on one side the mother’s preferential right to have the child with her, on the other the legitimate children’s allodial right (*odelsret*) to the family’s land property, and the preferential right of the eldest legitimate child to take possession of his father’s estate or farm on a cheap valuation (*aasoesret*).

Another point was strongly put forward by the promoters of the bill. The right of inheritance would in many cases make it difficult for the father to conceal the existence of the child. They said in the debate: the father will from the first know that his child will come forward at the moment of his death and claim its inheritance. It is right that he should have prepared his family for this eventuality, that he should not be enabled to conceal the existence of his own child from those nearest to him. It was the cowardice, the untruthfulness, and the irresponsibility of such concealment which the bill intended to demolish.

Several members objected to the bill on the ground that the wife might be exposed to the injustice of the money which she had brought to the marriage being used to pay the claim of inheritance of her husband’s illegitimate children.

This objection has, however, a wider bearing than the illegitimate child’s right to inherit from its father. . . . To remove this injustice to some extent an alteration was made in the law affecting the economic relation of husband and wife. The following addition was made: one partner to the marriage has the right to demand that their common property be divided if the other, when entering marriage, had, without the knowledge of the first, a child born out of wedlock, which is entitled by the legislation in force to inherit from the other partner—this also holds good in case the same later on after marriage gets such a child.

And the law further prescribes that in this case the partner who has demanded the division of the property may also demand that it is to be carried out in such a manner that each of the partners first

obtains what he or she has brought into the marriage or inherited during marriage. (In this way one partner can deprive the illegitimate child of the other of the inheritance of his or her special property) [pp: 288-89].

It was not, however, the economic side of the question which was urged by the opponents of the bill when they pleaded consideration for the wives as an argument against the bill. They depicted in strong colours the sorrow and shame of the wives and the legitimate children when at the death of the husband and the father the illegitimate child came forward with a claim of inheritance on the division of the property—they would then first be aware of the existence of the child. In their anxiety they went so far as to say that such a surprise would become common in the so-called "better" homes, as if these homes would be filled with illegitimate children if this law was put into force! [pp. 289-90].

The Children's Rights Laws aim expressly at preventing the claim to inheritance from an illegitimate child coming as a surprise to a man's family after his death. A man owes it to his wife to tell her the truth. It is the lie which is degrading, injurious to marriage, and offensive to the wife and her children. . . .

If a man steals or commits another criminal action no one demands that he shall be free from punishment or responsibility because it will bring sorrow and disgrace to his family. Still less can this argument be pleaded when it implies an injustice to an innocent child [p. 290].

SOME COURT DECISIONS IN ILLEGITIMACY CASES

6. The Right of the Putative Father to the Custody of an Illegitimate Child

CHARLES WRIGHT v. DEBORAH WRIGHT

2 Massachusetts Reports (2d ed.) 109 (1806)

This was a writ *De Homine replegiando*,¹ brought in the name of an illegitimate infant against his mother. Paul Wright, the putative father of the plaintiff, appeared on his behalf to prosecute the suit

¹ [A writ used to replevy a man out of prison, or out of the custody of a private person, giving security to the sheriff that the man will appear to answer the charge against him. The use of this procedure was superseded by the writ of *habeas corpus* but has been revived in some of our American states in an amended form. It can be used only for the benefit of an imprisoned person.—EDITOR.]

under the provision of the sixth section of the statute of Feb. 19, 1789, establishing the right to and the form of this writ, and the process was understood to have been commenced at his instance and expense. It appeared by a statement of facts, agreed in the case, that the plaintiff was born Jan. 10, 1802; that on the 28th June 1803, the said Paul and Deborah intermarried, and cohabited until Sept. 1, 1804, during which time the plaintiff lived with them. On the last mentioned day the said Deborah left her husband's house, and carried the plaintiff with her, always allowing the said Paul to be his putative father. In February 1805, a decree of divorce was had, dissolving the bonds of matrimony between them.

If, upon this state of facts, the court should be of opinion that the defendant had legal right to detain the said Charles in her custody, it was agreed that the plaintiff should become nonsuit, otherwise the defendant was to be defaulted, and judgment in either case to be entered accordingly.

S. Strong for the plaintiff, contended that by the marriage of these parties, the guardianship of this infant passed, with other chattel interests in possession, to the husband, and that after the divorce, they all remained with him, except only such part as may have been awarded to the wife as alimony. The husband having, by the marriage, become entitled to the guardianship of the child during infancy, the divorce had not destroyed his right. . . .

SEWALL, J. The rights of the putative father are not brought into question by this process. The case, as it stands on the record, gives occasion to the single inquiry only, whether this infant shall be in the care and custody of his mother, or set loose in the world without restraint or protection. On such a question I cannot hesitate in my opinion that the plaintiff should become nonsuit.

SEDGWICK, J. So far as respects these parties the question is singly, Whether a mother has a right to the custody of her natural child? I have no conception that an infant, in the arms of its mother, can be considered as "imprisoned, confined, or held in duress," with the intention of the framers of the statute which prescribes this writ. The marriage of the natural parents gave to the husband, in a certain degree, a right to the custody of the child. But the divorce, which dissolved the marriage, annulled that right, and the child re-

mained with the mother in the same manner, and under the same right, as before the marriage.

PARSONS, C. J. As the putative father has undertaken the prosecution of this action, I am disposed to consider his claims to the custody of the plaintiff, as if they were regularly before the court.

In legal contemplation a bastard is generally considered as the relative of no one. But to provide for his support and education, the mother has a right to the custody and control of him, and is bound to maintain him, *as his natural guardian*. In a moral view, he is considered as the child of his mother so far, that their intermarriage is unlawful, and any sexual intercourse between them would be incestuous. And the stat. 4 and 5 Ph. & M. c. 8. against carrying off and marrying maidens not sixteen years of age, has, for the protection of the child, been considered as extending to a natural daughter, in fact under the care of the putative father. The natural guardianship of the mother devolves on her husband on the marriage, in the same manner as an executorship or a guardianship derived from the authority of the Probate Court; and the husband's power, depending on the marriage, ceases on its dissolution. It is not like the right to the wife's chattels, which by the marriage are vested in the husband, and survive to him. Whether a putative father, from whose actual custody and care his natural daughter had been unlawfully taken by a stranger, can maintain a writ *De Homine replegiando* to regain his custody, is a question different from the present. Perhaps he is within the reason of the case of *Rex vs. Cornforth & al.* but it is unnecessary now to determine this question. As to the right of the present plaintiff I concur with my brethern. *Plaintiff nonsuit.*

7. The Illegitimate Child's Right of Inheritance in Connecticut

DICKINSON'S APPEAL FROM PROBATE

42 Connecticut 491 (1875)

FOSTER, J. The appellants are the grandsons of Mary Cotton, their mother being her illegitimate daughter. Mary Cotton was a sister of the testatrix, Eliza J. Cotton, and it is from the decree of the court of probate approving her last will that this appeal was taken. The mother and grandmother of the appellants had been dead some fifteen years at the time of the death of the testatrix, who was a

single woman, having never been married. She left no parents, no brothers or sisters, and no blood relations, unless the appellants are to be so considered, nearer than cousins. In the Superior Court the appellees moved to dismiss the appeal on the ground that the appellants were not heirs at law of the deceased, and had no interest in or title to her estate. The question thus raised is reserved for the advice of this court.

Were the question to be decided by the common law of England we should, without hesitation, advise that the appeal be dismissed. The appellants derive their title through their mother, and succeed to the same rights to which she, if living would succeed. She was an illegitimate. . . .

The laws of the different states of our Union differ widely as to the rights of illegitimates. Most of the states have passed statutes mitigating more or less the rigors of the common law, and conferring rights which that law denied. The general tendency seems to be one of increasing liberality. In most, if not in all of the states, they inherit from the mother, and the mother from them. In some states they inherit from each other, from collateral kindred, and from the father, when there has been a general, notorious, and mutual recognition. In many of the states subsequent marriage of parents legitimates. Connecticut is one of the very few states, possibly the only one, that has passed no statute defining the rights of bastards. We have a common law of our own, built up from the usages and customs of our people, and from various judicial decisions. It differs from the common law of England and from the Roman law.

The earliest case in our reports, where the rights of this class of persons were judicially considered, is *Canaan v. Salisbury*, 1 Root, 155. That was a settlement case, and it was held that a bastard was settled with the mother. The court said that such a rule was agreeable to the law of nature and reason. This was in 1790, and was a clear departure from the common law of England, which did not permit an illegitimate child to inherit even a local habitation or a name from the mother. This case, though decided by the Superior Court, has never been doubted, but always recognized as sound law. It has been followed and sanctioned by this court in divers cases. . . .

In the case of *Woodstock v. Hooker*, 6 Conn., 35, it was decided that a bastard born in Massachusetts, of a mother having a settlement in this state, took the settlement of the mother. PETERS, J., who gave the opinion of the court, said: "It has been discovered in this state that a bastard is the child of his mother," (p. 36) In *New Haven v. Newtown*, 12 Conn., 165, it was held that the new settlement of a mother acquired by marriage was communicated to her illegitimate children, whether born before or after the marriage. WILLIAMS, C. J., said: "The fundamental maxim of the common law, that a bastard is *nullius filius*, is entirely rejected here, and such a child is here recognized by law as the child of its mother, with all the rights and duties of a child," (p. 170). . . .

In the case of *Brown v. Dye*, 2 Root, 280, it was decided that under our statute of distributions a bastard might take as a brother to one who was born of the same mother. This was in 1795, and the decision was rendered by the Superior Court. The court said: "The common law of England, which has been urged in this case, is not to be mentioned as an authority in opposition to the positive law of our state, and nothing can be more unjust than that the innocent offspring should be punished for the crimes of their parents by being deprived of their right of inheriting by the mother, when there doth not exist among men a relation so near and certain as that of mother and child."

We have seen that it was at first held that a bastard derived its settlement from its mother, not from its place of birth. This was analogous to an interest derived by inheritance, and recognized the legal relation of parent and child.

It was next held that illegitimate children of the same mother could inherit from each other. This recognized the relation of brother and sister.

It was then held that an illegitimate child could inherit from its mother; and so the relation of parent and child was most directly recognized, and the reciprocal rights and duties growing out of that relation were thoroughly established. . . .

After as careful a consideration of the question as we have been able to give, we think that the points decided in the cases we have quoted tend strongly to the conclusion that these appellants, by

the law of Connecticut, are heirs at law of the testatrix, Eliza J. Cotton. . . .

Now if there be no obstacle, and we discover none, to having an estate pass from an illegitimate child through its mother to her collateral relations, can there be any obstacle to the passing of an estate from collateral relations, through its mother, to an illegitimate child?

But the appellees quote to us a number of cases decided in states where, by statute, bastards are authorized to inherit from their mothers, and their mothers from them, and yet all right of inheritance among collaterals is denied.

To these cases we deem it a sufficient answer in the first place to say, that in all those states the doctrine of the common law as to a bastard, that he was *nullius filius*, was considered as established. The statute, being in derogation of the common law, was therefore to be construed strictly. The bastard was to inherit to the extent, and only to the extent, specified in the statute. If the statute gave him a morsel of bread, the common law gave him a stone if he asked to have that morsel of bread enlarged.

In Connecticut, as we have seen again and again, this doctrine of the common law as to bastards never obtained, and so these decisions lack applicability. . . .

The removal of disabilities from illegitimates, so as to leave them capable of inheriting and transmitting inheritances on the part of the mother, collaterally, as well as lineally, like other persons, is sharply denounced. Facts however, we believe, fail to show either the immorality or impolicy of our law. We have been at some pains to examine the statistics on this subject, but have not been able to obtain returns from any of our sister states. We doubt if such returns are generally made. In ten years ending on the 31st day of December, 1874, there were born in this state 137,396 children, of which 1,118 (eighty one-hundredths of one per cent.) were illegitimate; as small a ratio, we venture to assert, as can anywhere be found. In England, for three years prior to and including 1860, the ratio of illegitimate to legitimate births was over $6\frac{1}{2}$ per cent.; and in Scotland, for ten years ending in 1870, it was 9.77 per cent. On the Continent, so far as we have had access to the returns, the ratio is,

generally, much larger. The number of illegitimates now in England and Wales alone is over one million. Surely it is not beneath the consideration of a wise statesmanship, whether it is just or prudent to cut off so large a portion of the population, who are charged with no crime, from all rights of inheritance, and isolate them almost absolutely from the body politic. . . .

In presenting our views thus fully, we regret that we have been compelled to occupy so much space. We advise the Superior Court to render judgment for the appellants.

In this opinion the other judges concurred.

8. The Mother's Right To Decide as to Custody

THE QUEEN v. NASH

10 Queen's Bench Division 454 (1883)

JESSEL, M. R.: I am of opinion that the order appealed from is clearly right. An unfortunate girl was seduced under the age of fifteen and had a child—her father turned her out of doors. She placed the child with two poor people whom she intended to pay for maintaining it. She paid something, having got a situation. Her health failed and she could not continue her payments. She was obliged to go into an infirmary, and on coming out fell in with a gentleman with whom she lives as a kept mistress. She is therefore leading an immoral life. She wishes to have the child and the nurse wishes to keep it. The appellants have not a particle of right to the custody of the child, and they set up the case that the child's natural mother is no relation to it, and has no more claim to its custody than any stranger. In a reported case MAULE, J., a very eminent judge, is said to have asked whether the mother of an illegitimate child was anything but a stranger to it. I am disposed to think that this was said ironically—but if not, the judge in making the observation must have been referring only to the strict legal rights as to guardianship. In many cases the law recognizes the right of a mother to the custody of her illegitimate child. In the case of *Ex parte Knee* before Sir James Mansfield, it was held that she had such a right unless ground was shewn for displacing it. The Court is now governed by equitable rules, and in equity regard was always had to the mother, the puta-

tive father, and the relations on the mother's side. Natural relationship was thus looked to with a view to the benefit of the child. There is in such a case a sort of blood relationship, which, though not legal, gives the natural relations a right to the custody of the child. Here the mother does not wish the child to be with her, but to be placed with her sister, a respectable married woman with one child, the husband is a clerk in the employ of the Press Association, and is therefore in a station superior to that of the appellants, and how it can be contended that it is for the benefit of the child to remain with the appellants I do not see. . . .

Appeal dismissed.

9. Acknowledgment of Child by Father and the Right of Inheritance

STOLTZ ET AL. v. DOERING

112 Illinois 234 (1885)

MR. JUSTICE CRAIG: This was an action of ejectment, brought by Henry Doering in the circuit court of DeKalb county, against Mary Elizabeth Stoltz, and Jacob Stoltz, her husband, to recover a certain tract of land in DeKalb county, which was owned originally by John Doering, who died intestate, seized of the land, in 1860. The cause was tried, by agreement, before the court, without a jury, and judgment was rendered in favor of the plaintiff, and defendants appealed.

Mary Elizabeth Stoltz, as appears from the evidence, was the daughter and only child of John Doering, who died seized of the land; but she was an illegitimate child, and upon this ground, plaintiff, who was a brother and next of kin of deceased, contends that the daughter can not inherit from the father, and that he, as sole heir of his brother, is entitled to recover. The plaintiff resides in Germany. The defendants were residing in this country at the time John Doering died, and upon his death they went into the possession of the land, and have remained in possession ever since, paying all taxes, and claiming to be the owners.

It appears from the evidence, that in 1831 John Doering, then a young unmarried man, resided in the province of Hesse Darmstadt, Germany; that he became acquainted with a girl residing at the same place, named Mary Webber. These parties became attached to each other, and were engaged to be married, and in April, 1832, Mary

Webber gave birth to a female child,—now Mary Elizabeth Stoltz, the defendant in this action. John Doering was the father of the child. He never, however, married Mary Webber, but, in 1834, left Germany and came to this country. He settled in DeKalb county, where, in 1845, he purchased the land in question. It is plain, from the evidence, that Doering always, after the birth of Mary Elizabeth, recognized and treated her as his daughter. In 1849 he had her brought to this country at his own expense, and introduced her to his friends and acquaintances as his child and daughter. Indeed, in the record of births and baptisms of the evangelical diocese of Meichs, in Germany, where Doering and Mary Webber resided, and where the child was born, John Doering acknowledged, in a public manner, in writing, over his own signature, that he was the father of the child.

The public acknowledgment of John Doering, in connection with the action taken in the parochial church by the mother and father of the child, it is contended, gave her the right of inheritance under the laws of the province in Germany where they resided, and as she became entitled to inherit there, she became the heir of John Doering, and as such entitled to inherit his property wherever situate. . . .

At common law a bastard has no right of inheritance. In the eyes of the law, bastards are not regarded as children for civil purposes. . . . Under our statute in force at the time of the death of John Doering, a bastard could not inherit from a father unless such father had married the mother of the child, and acknowledged the child as his own. Under section 65, chapter 109, Gross' *Statutes of 1869*, a bastard might inherit from the mother, but this statute confers no right of inheritance from the father.

The first question then to be determined is, whether the rights of the defendant, Mary Elizabeth Stoltz, are to be determined by the laws of the province of Germany, where she was born and baptized, or are those rights to be determined by the laws of this State, where the land involved is located. The general rule in regard to the descent of real estate is, that it is governed by the law of the country where the land is located. . . .

If we are correct in our view of the law on this question, then, al-

though the defendant may have been entitled to inherit from her father under the laws of Germany, where she was born, had he died leaving property in that country, it does not follow that the defendant can inherit the property in this State, as real estate situated here must descend in conformity to the laws of our State, and not as provided by the laws of Germany,—a foreign country.

It is also claimed by counsel for appellants, that Mrs. Stoltz is the legitimate child of John Doering, from a common law marriage with Mary Webber *per verba de futuro cum copula*. There is no doubt from the evidence but Doering and Mary Webber had agreed, between themselves, that they would, at some future day, become husband and wife, and while this contract was in existence, sexual intercourse was had and the child begotten; but we do not understand that this constituted a common law marriage. . . . The fact that sexual intercourse occurs after an agreement to marry at some future day, is not of itself sufficient to establish the marriage relation. To be availing, the parties, at the time of *copula*, must *then* accept each other as husband and wife. This was not done here. . . .

Judgment affirmed.

10. Support of Child by the Father

DAUGHDRIFF v. HATHORN

160 Mississippi 291 (1931)

ETHRIDGE, P. J.: This is an appeal from a judgment for four hundred dollars in a bastardy proceeding against Hugh Hathorn in favor of Orelia Daughdrill for the support of a bastard child born January 14, 1930. The judgment was to be paid in sums of forty dollars per annum over a period of ten years. . . .

It appears that some time in 1927 Hugh Hathorn for a short period of time was a boarder in the home of the father of Orelia Daughdrill, who at that time was fifteen or sixteen years old, Hathorn being about thirty-five and a widower with two children. . . . It appears from the testimony of the appellant that some time during the year 1928, the exact time she does not remember, she began to have sexual intercourse with Hathorn; this continued at infrequent intervals and she became pregnant during April, 1929. She testified that, after she became so, the appellee, Hathorn, asked

her mother for her in marriage and stated that he was going to marry her. . . .

The father and mother testified that they did not know of the pregnancy of their daughter until October during the fair at Jackson, Mississippi. After this was discovered Mr. Daughdrill, the father of the appellant, had her write Hathorn to come over, and he came over in November, 1929, and, according to the testimony of the father and mother of the appellant, he admitted responsibility for their daughter's condition and stated that he was going to marry her.

Hathorn denied having sexual relation with the appellant at all, but admitted going with her and being with her on numerous occasions. He denied writing certain letters exhibited to him addressed to the appellant and contained in the record bearing a government postmark and date of mailing, but he was contradicted as to this by testimony of the appellant, and the contents of the letters are such as indicate a knowledge of the appellant's condition then and solicitude and responsibility therefor. The evidence was ample to sustain the finding of the jury that he was the father of the child and the writer of the letters. . . .

The court granted the appellee, Hathorn, the following instruction, among others: "The court instructs the jury for the defendant, Hugh Hathorn, that if your minds should be satisfied by a clear preponderance of the evidence in this case that the defendant, Hugh Hathorn, is the father of the child in question, still the court further instructs you that when you come to assess the damages in this case, if any, it is your sworn duty to take into consideration, his ability to pay such damages so assessed, and that in no event should the jury award her more damages than is reasonably necessary for the support and education of said child, taking into consideration the defendant's ability to pay such judgment." The giving of this instruction is assigned as error.

After the verdict was returned the appellant filed a motion for a new trial setting up the inadequacy of the verdict, and that it was so inadequate as to be evidence of malice, prejudice, or partiality, and in disregard of the sworn testimony, and also the giving of the said instruction above quoted. . . .

The primary object of the proceeding is to secure the support and

education of the child for a period of not more than 18 years. The ability of the father to pay his debts is not a criterion by which this amount shall be determined. The only pertinent fact is his ability to earn, coupled with his property. The child must be supported and educated according to the requirements and standards of ordinary living in the community in which it is to be supported and educated. A child handicapped socially and in business by the stigma of bastardy ought not to be unduly restricted in its standard of living and education. It is entitled to have the benefits of an ordinary support and education such as other children usually receive to meet the requirements of life. We also are of the opinion that the verdict is so grossly inadequate as to shock conscience and intelligence. There can be no doubt that forty dollars per year is wholly inadequate and insufficient to support and educate a child. . . .

The father of the mother of the bastard child is not under primary duty to support such bastard child. That duty falls under the law upon the father of the bastard. He who has danced should pay the fiddler, and the law requires the father of the bastard child to support and educate it for such period of time until the child will become able to support and maintain itself. . . .

The judgment as to liability will be affirmed, and the judgment will be reversed and the cause remanded solely for the finding of the necessary amount to properly support such child.

**11. Can Support of an Illegitimate Grandchild Be
Required under the Poor Law?**

TOWN OF PLYMOUTH v. HEY

285 Massachusetts 357 (1934)

CROSBY, JUSTICE: This suit is brought . . . to compel the defendant to reimburse the plaintiff for the expense incurred for the support of Gladys M. Hey, an illegitimate daughter of Gladys L. Hey, deceased daughter of the defendant, and to require the defendant to provide for the future support of the child. The case was heard by a judge of the Superior Court who found and ruled that the bill should be dismissed with costs. He found that at the time of her death Gladys L. Hey retained a settlement in Plymouth; that she left no property and her illegitimate child, Gladys M. Hey,

is without any means of support; that the defendant has sufficient ability to support the child; and that \$5 a week is a reasonable sum for her support.

G. L. c. 117, Sec. 6, as amended by St. 1928, c. 155, Sec. 15, provides: "The kindred of such poor persons, in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living in the commonwealth, and of sufficient ability, shall be bound to support such poor persons in proportion to their respective ability." This statute is substantially the same as the original statute dealing with this subject, enacted in 1692 and re-enacted in 1788 and 1793, and found in each subsequent revision of the laws, and since at common law an illegitimate child was regarded as the child of no one, the defendant cannot be charged with liability.

It is the contention of the plaintiff that the terms "kindred" and "consanguinity" mean relationship by ties of blood in the direct line from a common ancestor, and that the words according to their natural import and accepted meaning refer to the children, grandchildren, parents and grandparents of paupers irrespective of any question of the legitimacy of the relationship. There is no decision of this court which interprets the meaning of this statute or its earlier enactments with reference to the precise question here presented. The fact that the pauper in this case is a minor has no significance. No greater or less duty is imposed by the statute on the kindred of paupers who are minors than upon the kindred of those who are of full age. At common law no obligation rested upon a father to support his adult children. *A fortiori* no duty to support rested upon grandparents. The duty to support paupers as such is entirely imposed by statutes. It was said in *Wright v. Wright*, 2 Mass. 109, 110: "In legal contemplation, a bastard is generally considered as the relative of no one." In construing Pub. St. c. 125, Sec. 4, as amended by St. 1882, c. 132, it was said by Knowlton, J., in *Sanford v. Marsh*, 180 Mass. 210, 211, 62 N.E. 268: "By the common law a bastard is *nullius filius*. He can be the heir of no one, nor have heirs, except of his own body. He has no ancestors from whom any inheritable blood can be derived. The common law on this subject is in force in Massachusetts, except as it has been changed by

the statutes. The statutes which have been adopted here have all been constructed strictly." In *Cooley v. Dewey*, 4 Pick. 93, 94, 16 Am. Dec. 326, it was said that "there seems to be no maxim of [the common] law less questionable, than that a bastard is *filius nullius*," it being there held that the mother of an illegitimate child does not inherit his estate. See, also, *Gibson, Appellant*, 154 Mass. 378, 381, 28 N.E. 296. *Kent v. Barker*, 2 Gray, 535, held that an illegitimate child unintentionally omitted to be provided for in the will of its mother was not entitled under Rev. St. c. 62, Sec. 21, to the share of her estate which it would have taken under Rev. St. c. 61, Sec. 2, if she had died intestate. It was held in *King v. Thissell*, 222 Mass. 140, 141, 109 N.E. 880, that the words "issue of a deceased child" in R.L. c. 135, Sec. 19 (now G.L. [Ter. Ed.] c. 191, Sec. 20) should be construed to mean legitimate issue of any legitimate deceased child. This case was cited with approval in *King v. Dolan*, 255 Mass. 236, 151 N.E. 109. Although most of the decided cases in this Commonwealth respecting an illegitimate child deal with questions of inheritance, they plainly show that "child" and "children" at common law have been interpreted to mean only a legitimate child or children. It follows by the same reasoning that the term grandchild must be interpreted as meaning legitimate grandchild. In *Kent v. Barker*, 2 Gray, 535, at page 536, it is said: "It is well settled, indeed it is conceded, that at common law the words 'child' and 'children' mean only legitimate child and children. Illegitimate children are the children of nobody, and have no rights of inheritance." The plaintiff cites *Gritta's Case*, 236 Mass. 204, 127 N.E. 889, which arose under the Workmen's Compensation Act. St. 1911, c. 751. It was there held that the word "children" did not include an illegitimate child, but that the word "dependents" in part 5, Sec. 2, of the act included an illegitimate child who was found to be a member of the employee's family. It was held in *Hiram v. Pierce*, 45 Me. 367, 71 Am. Dec. 555, under Maine R. S. c. 24, Sec. 9, a statute similar to G. L. (Ter. Ed.) c. 117, Sec. 6, that in law an illegitimate child is *filius nullius* and has no kindred by consanguinity and that such person could have no heirs but of his own body. In *Hillsborough v. Deering*, 4 N.H. 86, it was held that a father was

not bound to support the illegitimate child of his daughter, and that the child was not his grandchild within the meaning of the statute. To like effect see *State v. Miller*, 3 Pennewill (Del.) 518, 52 A. 262.

Neither in the original statute enacted in 1692 nor in any subsequent revisions or codifications of it does it appear that illegitimate children are included. Whenever somewhat analogous statutes have been considered by this court, it has without exception been held that the words "child" and "children" refer only to legitimate children. The word "kindred" as used in G.L. (Ter. Ed.) c. 117, Sec. 6, has no application to the present case. The statute which imposes a financial burden upon the persons therein named is to be construed strictly. It appears, as pointed out by the trial judge, that the statutes from 1692 down to the present applicable to the support of bastard children have been grouped under the title "Of the Maintenance of Bastard Children." Rev. St. c. 49. Gen. St. c. 72. In none of these codifications of the law applicable to such persons is there a provision imposing responsibility for their support upon the maternal next of kin. It cannot be thought that the Legislature in re-enacting the statute in substantially the same terms intended any change of meaning. *Opinion of the Justices*, 237 Mass. 591, 594, 130 N.E. 685. The words "by consanguinity" in the statute cannot be construed to include illegitimate children. The words "by consanguinity" are apt to distinguish them from the persons named by affinity.

It results that as no liability for the support of this child is imposed upon the defendant, either by the common law or by statute, the bill cannot be maintained. In accordance with the terms of the reservation a decree is to be entered dismissing the bill.

12. Minnesota's Provision for Illegitimate Children in 1917

A. LEGAL STATUS AND RIGHTS

"AN ACT TO AMEND CHAPTER 17, GENERAL STATUTES, 1913, RELATING TO ILLEGITIMATE CHILDREN," LAWS OF MINNESOTA, 1917,
CHAP. 210¹

SECTION 1. Chapter 17, *General Statutes, 1913*, is hereby amended so as to read as follows:

CHAPTER 17.—ILLEGITIMATE CHILDREN

3214. *Complaint—warrant.*—On complaint being made to a justice of the peace or municipal court by any woman who is delivered of an illegitimate child, or pregnant with child which, if born alive, might be illegitimate, accusing any person of being the father of such child, the justice or clerk of the court shall take the complaint in writing, under her oath, and thereupon shall issue a warrant, directed to the sheriff or any constable of the county commanding him forthwith to bring such accused person before such justice or court to answer such complaint; which warrant may be executed anywhere within the state.

3215. *Action how entered—proceedings.*—The justice shall enter an action in his docket, or the clerk of court in his register of actions, in which the state shall be plaintiff and the accused defendant, and shall make such other entries as are required in criminal actions. On the return of the warrant with the accused, the justice or judge shall examine under oath the complainant, and such other witnesses as may be produced by the parties, respecting the complaint, and shall reduce such examination to writing. He may at his discretion, and at the request of either party shall, exclude the general public from attendance at such examination.

3216. *Recognizance.*—If there is probable cause to believe the defendant guilty as charged in the complaint, the justice or judge shall require him to enter into recognizance, with approved sureties, in a sum not less than one hundred dollars nor more than five hundred dollars, to appear before the district court of the proper county at

¹ [See also section 2 of law (p. 622) enacted the same year giving the Minnesota State Board of Control the duty of protecting illegitimate children.—EDITOR.]

the next term thereof, or if such court is then sitting in the county, at a date fixed by the justice or judge, and answer said complaint and abide the order of such court thereon. If he fails to give such recognizance, the justice or judge shall commit him to the county jail, there to be held to answer such complaint at the next term of such court, or at the date so fixed. Thereupon the justice or judge shall certify the examination, and return the same and all process and papers in the case to the clerk of such court.

3217. *Proceedings in district court.*—At the next term of said court, or at the date fixed by the justice or judge, if the complainant has not been delivered, or is not able to attend, or for any other sufficient reason, the court may continue the cause, and such continuance shall renew the recognizance, which shall remain in force until final judgment. If the sureties shall at any term of court surrender the defendant and ask to be discharged, or if the court shall at any time deem it proper, it may order a new recognizance to be taken, and commit the defendant until it is given.

3218. *Trial—judgment and proceedings to enforce the same.*—Upon the trial the examination taken before the justice or judge of the municipal court shall in all cases be read to the jury when demanded by the defendant. If he is found guilty, or admits the truth of the accusation, he shall be adjudged to be the father of such child and thenceforth shall be subject to all the obligations for the care, maintenance and education of such child, and to all the penalties for failure to perform the same, which are or shall be imposed by law upon the father of a legitimate child of like age and capacity. Judgment shall also be entered against him for all expenses incurred by the county for the lying-in and support of, and attendance upon the mother during her sickness, and for the care and support of such child prior to said judgment of paternity, the amount of which expenses, if any, shall also be found by the jury if they return a verdict of guilty; together with the costs of prosecution. If the defendant fails to pay the amount of such money judgment forthwith, or during such stay of execution as may be granted by the court, he shall be committed to the county jail, there to remain until he pays the same or is discharged according to law; provided, however, that no stay shall be granted unless the defendant shall give a bond to the county,

in such sum and with such sureties as shall be approved by the court, for the payment of such money judgment on or before the expiration of such stay.

3219. *Action by mother of child against father.*—In the event of judgment of paternity as provided in section 3218 the mother shall be entitled to recover of the father in a civil action all expense necessarily incurred by her in connection with her confinement, including her suitable maintenance for not more than eight weeks next prior thereto and not more than eight weeks thereafter; and for the burial of the child if the same shall have been stillborn or shall have died after birth.

3220. *Petition for discharge—notice.*—Any person who has been imprisoned ninety days for failure to pay any such money judgment may apply to said court, by petition setting forth his inability to pay the same, and praying to be discharged from imprisonment, and shall attach to such petition a verified statement of all his property, money and effects whether exempt from execution or otherwise. Thereupon the court shall appoint a time and place for hearing said application, of which the petitioner shall give at least ten days' notice to the county attorney.

3221. *Hearing—discharge.*—At the hearing the defendant shall be examined on oath in reference to the facts set forth in such petition and his ability to pay such money judgment, and any other legal evidence in reference to such matters may be produced by any of the parties interested. If it appears that the defendant is unable to pay such judgment, the court may direct his discharge from custody, upon his making affidavit that he has not in his own name any property, real or personal, and has no such property conveyed or concealed, or in any manner disposed of with design to secure the same to his use or to avoid in any manner payment of such judgment. If upon such hearing it appears that the defendant has property, but not sufficient to pay such judgment, the court may make such order concerning the same, in connection with such discharge as justice may require. The defendant's discharge as aforesaid shall not affect the right of the county to collect upon execution any portion of such judgment remaining at any time unsatisfied, subject to all the provisions of law relating to judgments for the payment of money.

3222. *Complaint by others than mother.*—If a woman is delivered of an illegitimate child, or is pregnant with a child likely to be illegitimate when born, the county board of the county where she resides, or any member thereof, or the state board of control or any person duly appointed to perform in said county any of the duties of said board relating to the welfare of children, may apply by complaint to a justice of the peace of the county or to a municipal court to inquire into the facts and circumstances of the case.

3223. *Procedure—warrant.*—Such justice or the judge of the municipal court may summon the woman to appear before him, and may examine her on oath respecting the father of such child, the time when and place where it was begotten, and any other facts he deems necessary for the discovery of the truth, and thereupon shall issue his warrant to apprehend the putative father. Thereafter the proceedings shall be the same as if the complaint had been made by such woman under the provisions of this chapter, and with like effect, and in all cases the complainant and the accused may require the attendance of such woman as a witness.

3224. *Compromise by board.*—The county board, either before or after judgment, may make such compromise and settlement with the putative father of any illegitimate child, as they deem equitable and just, for expenses incurred by the county for which judgment may be or shall have been entered pursuant to section 3218.

3225. (a) *Settlement by father.*—The state board of control or the duly appointed guardian of the person of an illegitimate child shall have authority to accept from the duly adjudged or acknowledged father of the child such sum as shall be approved by the court having jurisdiction of proceedings to establish the paternity of the child, in full settlement of all obligations for the care, maintenance and education of such child; and shall hold or dispose of the same as ordered by said court. Such settlement shall discharge the father of all further liability, civil and criminal, on account of such child; provided that such settlement shall not affect any liability of the father under section 3219.

3225. (b) *Clerk to report name of adjudged father.*—Upon the entry of a judgment determining the paternity of an illegitimate child the clerk of the district court shall notify in writing the state registrar of vital statistics of the name of the person against whom such

judgment has been entered, together with such other facts disclosed by his records as may assist in identifying the record of the birth of the child as the same may appear in the office of said registrar. If such judgment shall thereafter be vacated that fact shall be reported by the clerk in like manner.

3225. (c) *Physician may testify*.—In any proceeding under this chapter a licensed physician or surgeon may testify concerning the fact and probable date of inception of the pregnancy of his patient without her consent, and shall so testify when duly called as a witness.

3225. (d) *Purpose of act*.—This chapter shall be liberally construed with a view to affecting its purpose, which is primarily to safeguard the interests of illegitimate children and secure for them the nearest possible approximation to the care, support and education that they would be entitled to receive if born of lawful marriage, which purpose is hereby acknowledged and declared to be the duty of the state; and also to secure from the fathers of such children repayment of public moneys necessarily expended in connection with their birth.

3225. (e) *Records private*.—All records of court proceedings in cases of alleged illegitimacy shall be withheld from inspection by, and copies thereof shall not be furnished to, persons other than the parties in interest and their attorneys, except upon order of the court.

SEC. 2. The provisions of this act are severable one from another and in their application to the persons and interests affected thereby. The judicial declaration of the invalidity of any provision, or the application thereof, shall not affect the validity of any other provision, or the application thereof.

SEC. 3. This act shall take effect and be in force from and after the first day of January, 1918.

B. THE BIRTH RECORD

"AN ACT TO REGULATE PUBLIC RECORDS CONCERNING ILLEGITIMATE CHILDREN BY AMENDING SECTIONS 4651, 4652, 4661 AND 4662, AND BY ADDING THREE NEW SECTIONS TO CHAPTER 29, GENERAL STATUTES, 1913, RELATING TO PUBLIC HEALTH," LAWS OF MINNESOTA, 1917, CHAP. 220

SECTION 1. [Amends section 4651, *General Statutes, 1913*, to provide "that if the child is illegitimate the name or residence of, or

other identifying details relating to, the putative father shall not be entered without his consent, except as provided in section 4660-A."]

SEC. 2. [Section 4652 *General Statutes, 1913*, amended to provide that in case of death of illegitimate child, putative father's name is not to be entered on death certificate without his consent, except as provided in section 4660-A.]

SEC. 3. *Transcripts for public record book.*—There is hereby added to chapter 29, *General Statutes, 1913*, a new section, to follow section 4653, and to be known as section 4653-A, as follows:

4653-A. Immediately upon the receipt of a certificate of birth not accompanied with a certificate of death of the same child the local and state registrars, respectively, shall transcribe therefrom into a book to be known as the "public record of births" the following items of information: Name, sex, color or race and date of birth of child; county and city, town or village where birth occurred; name and age of mother. The public record of births shall be open to examination by all persons desiring to consult it, and from such book only shall transcripts be made for use in connection with school attendance and employment.

SEC. 4. *Judgment of paternity—facts to be recorded—fact of illegitimacy not to be disclosed—exception.*—There are hereby added to chapter 29, *General Statutes, 1913*, two new sections to follow section 4660 and to be known respectively as sections 4660-A and 4660-B, as follows:

4660-A. Whenever the clerk of a district court shall report to the state registrar that a judgment has been entered determining the paternity of an illegitimate child the state registrar shall record the name of the father, and sufficient data to identify the judgment, in connection with the record of the birth of the child appearing in his office, and also in connection with the record of the death of the child, if there be such record. A report by the clerk of the subsequent vacation of such judgment shall be recorded in like manner.

4660-B. Except when so ordered by a court of record no member of the state board of health nor any state or local registrar, nor any person connected with the office of either, shall disclose the fact that any child was either legitimate or illegitimate. The district court shall have jurisdiction, upon petition against and notice to the

state registrar, to issue such orders permitting or requiring the inspection of records of births and deaths, as to it may seem just and proper, and the making and delivery of certified copies thereof.

SEC. 5. *Certified copies of record as evidence—fees.*—Section 4661, *General Statutes, 1913* is hereby amended so as to read as follows:

4661. The state registrar, or any local registrar, shall furnish any applicant therefor a certified copy of the record of any birth or death recorded under the provisions of this act; provided that the fact that any child was either legitimate or illegitimate, or other facts from which such fact can be determined, shall not be disclosed except when ordered by a court of competent jurisdiction in accordance with section 4660-B. . . .

SEC. 6. *Penalties.*—Section 4662, *General Statutes, 1913*, is hereby amended so as to read as follows:

4662. Any person who shall violate any of the provisions of this act, or shall wilfully neglect or refuse to perform any duty imposed upon him thereby, or shall furnish false information affecting any certificate or record provided in this chapter, or who shall disclose any information in violation of section 4660-B or 4661, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars or imprisoned in the county jail for a period of not more than ninety days.

SEC. 7. This act shall take effect and be in force from and after the 1st day of January, 1918.

C. STATUTORY REGULATION OF MATERNITY HOSPITALS IN MINNESOTA, 1919

"AN ACT DEFINING AND REGULATING MATERNITY HOSPITALS"

LAWS OF MINNESOTA, 1919, EXTRA SESSION, CHAP. 50

SECTION 1. *Maternity hospital defined.*—Any person who receives for care and treatment during pregnancy or during delivery or within ten days after delivery, more than one woman within a period of six months, except women related to him or her by blood or marriage, shall be deemed to maintain a maternity hospital. The word "person" where used in this act shall include individuals, partnerships, voluntary associations and corporations; provided, however, that this act shall not be construed to relate to any institution under the management of the state board of control or its officers or agents.

SEC. 2. *Licensed by board of control.* --The state board of control is hereby empowered to grant a license for one year for the conduct of any maternity hospital that is for the public good and that is conducted by a reputable and responsible person; and it shall be the duty of the board of control to prescribe such general regulations and rules for the conduct of all such hospitals as shall be necessary to effect the purposes of this act and all other laws of the state relating to children so far as the same are applicable and to safeguard the well-being of all infants born therein, and the health, morality and best interests of the parties who are inmates thereof. No maternity hospital shall receive a woman for care therein without first obtaining a license to conduct such hospital from said board of control. No such license shall be issued, unless the premises are in fit sanitary condition. The license shall state the name of the licensee, designate the premises in which the business may be carried on, and the number of women that may be properly treated or cared for therein at any one time. Such license shall be kept posted in a conspicuous place on the licensed premises. No greater number of women shall be kept at any one time on the premises for which the license is issued than is authorized by the license and no woman shall be kept in a building or place not designated in the license. A record of the license so issued shall be kept by the board of control, which shall forthwith give notice to the state board of health and to the local board of health of the city, village or town in which the licensee resides of the granting of such license and the conditions thereof. The license shall be valid for one year from the date of the issuance thereof. The state board of control may, after due notice and hearing, revoke the license in case the person to whom the same is issued violates any of the provisions of this chapter, or when, in the opinion of said board, such maternity hospital is maintained without due regard to sanitation and hygiene, or to the health, comfort or well-being of the inmates or infants born to such inmates or in case of the violation of any law of the state in a manner disclosing moral turpitude or unfitness to maintain such hospital or that any such hospital is conducted by a person of ill repute or bad moral character.

Written charges against the licensee shall be served upon him at least three days before hearing shall be had thereon and a written copy of the findings and decision of the board upon hearing shall be

served upon the licensee in the manner prescribed for the service of a summons in civil actions.

Any licensee feeling himself aggrieved by any decision of the board may appeal to the district court by filing with the clerk thereof in the county where his hospital is situated within ten days after written notice of such decision, a written notice of appeal specifying the grounds upon which the appeal is made.

The appeal may be brought on for hearing in a summary manner by an order to show cause why the decision of the board should not be confirmed, amended or set aside. The written notices and decisions shall be treated as the pleadings in the case and may be amended in the discretion of the court. The issues shall be tried anew by the court and findings shall be made upon the issues tried.

Either party may appeal to the supreme court from the determination of the district court within five days after notice of filing the decision, in the manner provided for appeals in civil action.

No revocation of license shall become effective until any appeal made shall have been determined. In case of the revocation of a license, the board shall make a notation thereof upon its records and give written notice of such revocation to the licensee by delivery of a copy of the order of revocation to the licensee, or leaving a copy thereof with a person of suitable age and discretion living upon the premises. In case of revocation the board of control shall also notify the state board of health and the local board of health of the city, village or town in which the hospital is situated.

SEC. 3. *Disposition of children.*—No person, as an inducement to a woman to go to any maternity hospital during confinement, shall in any way offer to dispose of any child or advertise that he will give children for adoption or hold himself out as being able to dispose of children in any manner.

SEC. 4. *Board of control to prescribe forms.*—The state board of control may prescribe forms for the registration and record of persons cared for in any such hospital, and the licensee shall be entitled to receive gratuitously from the board of control a book of forms for such registration and record. Each book shall contain a printed copy of this chapter. The licensee of a maternity hospital shall keep a record in the form to be prescribed by said board, wherein shall be

entered the true name of every patient, together with all her places of residence during the year preceding admission to said hospital, the name and address of the physician or midwife who attended at each birth taking place at such hospital, or who attended any sick infant therein, and the name and address of the mother of such child; the name and age of each child who is given out, adopted or taken away to or by any person, together with the name and residence of the person so adopting or taking away such child, and such other information as will be within the knowledge of the licensee and as the board shall prescribe.

SEC. 5. *Physician or midwife to make report.*—Every birth occurring in a maternity hospital shall be attended by a legally qualified physician or midwife. The licensee owning or conducting such hospital shall, within twenty-four hours after a birth occurs therein, make a written report thereof to the state board of control, giving the name of the mother, the sex of the child and such additional information as shall be within the knowledge of the licensee and as may be required by the board. The licensee owning or conducting any such hospital shall immediately after the death in a maternity hospital of a woman, or an infant born therein or brought thereto, cause notice thereof to be given to the local board of health of the city, village or town in which such hospital is located.

SEC. 6. *Inspection of hospitals.*—The officers and authorized agents of the state board of control, and of the state board of health and the local board of health of the city, village or town in which a licensed maternity hospital is located, may inspect such hospital at any time and examine every part thereof. The officers and agents of the state board of control may call for and examine the records which are required to be kept by the provisions of this act and inquire into all matters concerning such hospital and patients and infants therein; and the said officers and authorized agents of the state board of control shall visit and inspect such hospitals at least once every six months and shall preserve reports of the conditions found therein. The licensee shall give all reasonable information to such inspectors and afford them every reasonable facility for viewing the premises and seeing the patients therein.

SEC. 7. *Information as to legitimacy of child.*—Whenever a woman, who within ten days after delivery of a child, or a woman who is pregnant, is received for care in a maternity hospital, the licensee of such maternity hospital or the officer in charge of such other hospital, shall use due diligence to ascertain whether such child is legitimate and if there is reason to believe that such child is illegitimate, or will be when born illegitimate, such licensee shall report to the state board of control forthwith the presence of such woman, together with such other information as shall be within the knowledge of the licensee and as the board may require.

SEC. 8. *Disclosure of contents.*—No officer or authorized agent of the state board of control, state board of health or the local boards of health of the city, village or town where such licensed hospital is located, or the licensee of such a hospital, or any of its agents, or any other person, shall directly or indirectly disclose the contents of the records herein provided for, or the particulars entered therein, or facts learned about such hospital, or the inmates thereof, except upon inquiry before a court of law, at a coroner's inquest or before some other tribunal, or for the information of the state board of control, state board of health, or the local board of health of the village, city or town in which said hospital is located. Provided, however, that nothing herein shall prohibit the board of control, with the consent of any patient in such hospital, disclosing such facts to such proper persons as may be in the interest of such patient or the infant born to her.

SEC. 9. *Burden of proof.*—In a prosecution under the provisions of this act or any penal law relating thereto, a defendant who relies for defense upon the relationship of any woman or infant to himself, shall have the burden of proof.

SEC. 10. *Violation a gross misdemeanor.*—Every person who violates any of the provisions of this act shall upon conviction of the first offense be guilty of a misdemeanor. The second or subsequent offense shall be a gross misdemeanor.

SEC. 11.—This act shall take effect and be in force from and after its passage.

SEC. 12.—All acts and parts of acts inconsistent herewith are hereby repealed.

D. REGULATION OF MINNESOTA MATERNITY HOSPITALS
BY THE STATE BOARD OF CONTROL

ADOPTED BY THE STATE BOARD OF CONTROL, 1928

Because of the very large death rate among children born out of wedlock the State board of control has declared:

1) That it is the *policy* of the board of control that such illegitimate children should be nursed by their mothers for a period of at least three months and as long thereafter as is advisable:

2) That it is agreed between certain properly equipped and specialized maternity hospitals in the State of Minnesota and the State board of control that such hospitals will receive women for this full term of maternity care and afford the mother and child full protection as well as aid and assistance at a reasonable cost; and

3) That it is the policy of such specialized maternity hospitals and the State board of control that the consent of the mother to remain in such hospital for a period of at least three months after the birth of her baby, should be obtained before her admission thereto.

E. REGULATION OF INFANT HOMES IN MINNESOTA

"AN ACT DEFINING AND REGULATING INFANT HOMES," LAWS OF
MINNESOTA, 1919, EXTRA SESSION, CHAP. 52

SECTION 1. *Infants' home defined.*—Any person who receives for care or treatment or has in his custody at any one time three or more infants under the age of three years, unattended by a parent or guardian, for the purpose of providing them with food, care and lodging, except infants related to him by blood or marriage, shall be deemed to maintain an infants' home. The word "person" where used in this act shall include individuals, partnerships, voluntary associations and corporations: provided, however, that this act shall not be construed to relate to any institution under the management of the state board of control or to its officers or agents, nor to any person who has received for care alone, children from not more than one family during any period of three months.

SEC. 2. *Licensed by board of control.*—The state board of control is hereby empowered to grant a license for one year for the conduct of any infants' home that is for the public good, and is conducted by a

reputable and responsible person; and it shall be the duty of the board to provide such general regulations and rules for the conduct of all such homes as shall be necessary to effect the purposes of this act and all other laws of the state relating to children so far as the same are applicable, and to safeguard the well-being of all infants, born therein and the health, morality and best interests of the patients who are inmates thereof. No person shall receive an infant for care in any such infants' home without first obtaining from said board a license to conduct such infants' home. No such license shall be issued unless the premises are in a fit sanitary condition. The license shall state the name of the licensee, the particular premises, in which the business may be carried on, and the number of infants that may be properly boarded or cared for therein at any one time; and such license shall be kept posted in a conspicuous place on the licensed premises. No greater number of infants shall be kept at any one time on the premises than is authorized by the license and no infant shall be kept in a building or place not designated in the license. A record of the licenses so issued shall be kept by the board of control, which shall forthwith give notice to the state board of health and to the local board of health of the city, village or town in which the licensee resides of the granting of such license and the conditions thereof. The license shall be valid for one year from the date of issue. The state board of control may, after due notice and hearing, revoke the license if any provision of this chapter is violated, or when, in the opinion of said board such infants' home is maintained without due regard to sanitation and hygiene or to the health, comfort, morality or well-being of the inmates thereof, or in case of the violation of any law of the state, in a manner disclosing moral turpitude or unfitness to maintain such hospital, or upon evidence that any such hospital is conducted by a person of ill repute or bad moral character. Written charges against the licensee shall be served upon him at least three days before hearing shall be had thereon and a written copy of the findings and decision of the board upon hearing shall be served upon the licensee in the manner prescribed for the service of a summons in civil actions.

Any licensee feeling himself aggrieved by any decision of the board may appeal to the district court by filing with the clerk thereof

in the county where his hospital is situated within ten days after written notice of such decision, a written notice of appeal specifying the grounds upon which the appeal is made.

The appeal may be brought on for hearing in a summary manner by an order to show cause why the decision of the board would not be confirmed, amended or set aside. The written notices and decisions shall be treated as the pleadings in the case and may be amended in the discretion of the court. The issues shall be tried anew by the court and findings shall be made upon the issues tried.

Either party may appeal to the supreme court from the determination of the district court within five days after notice of filing the decision, in the manner provided for appeals in civil action.

No revocation of license shall become effective until any appeal made shall have been determined.

In case of revocation the board shall make an appropriate notation upon the records of the granting of such license and give written notice of the revocation of the license to the licensee by serving a copy of the order of revocation upon the licensee in the manner provided by law for the service of a summons in a civil action. Upon such revocation the board of control shall forthwith notify the state board of health, and the local board of health of the city, town or village in which the infants' home is situated.

SEC. 3. *Forms to be prescribed by board.*—The state board of control may prescribe forms for the registration and record of infants cared for in such home and the licensee shall be entitled to receive gratuitously from the board of control a book of forms for such registration and record. Each book shall contain a printed copy of this chapter. The licensee of an infants' home shall keep a record in a form to be prescribed by the state board of control, wherein shall be entered the name and age of each child received or cared for in such home, together with the names and addresses of the parents and the name and address of the persons bringing the child to the home; the name of any physician attending any sick infant in the home; the name and age of each infant who is given out, adopted or taken away to or by any person, together with the name and residence of the person so adopting or taking away such infant; and such other information as the board shall prescribe. The licensee immediately after

the death in an infants' home of an infant shall cause notice thereof to be given to the local board of health of the city, village or town in which such home is located.

SEC. 4. *Inspection.*—The officers and authorized agents of the state board of control and of the state board of health and the local board of health of the several cities, villages and towns of the state in which a licensed infants' home is located may inspect such home at any time and examine every part thereof. The officers and agents of the state board of control may call for and examine the records which are required to be kept by the provisions of this act and inquire into all matters concerning such home and the infants therein; and the officers and agents of the state board of control shall visit and inspect such homes at least once in every six months and shall make, and the board shall preserve, reports of the conditions found therein. The licensee shall give all reasonable information to such inspectors and afford them every reasonable facility of viewing the premises and seeing the inmates.

SEC. 5. *Ascertaining of legitimacy.*—Whenever an infant is received for care in an infants' home, the licensee of such home shall use due diligence to ascertain whether such child is legitimate and in case there is any reason to believe that such infant is an illegitimate child, then and in such case such licensee shall notify the board of control thereof and furnish said board with such information bearing on such question as may have come to the knowledge of the licensee or any officer or agent of any such home.

SEC. 6. *Disclosure prohibited.*—No officer or authorized agent of the state board of control, state board of health or the local boards of health of the city, village or town where such licensed home is located, or the licensee of such a home, or any of its agents, or any other person, shall directly or indirectly disclose the contents of the records herein provided for, or the particulars entered therein, or facts learned about such homes, or the inmates thereof, except upon inquiry before a court of law, at a coroner's inquest or before some other tribunal, or for the information of the state board of control, state board of health or the local board of the village, city or town in which said home is located. Provided, however, that nothing herein shall prohibit the board of control, disclosing such facts to such

proper persons as may be in the interest of any child maintained in said home with the consent of the mother of said child.

SEC. 7. *Burden of proof.*—In a prosecution under the provisions of this act or any penal law relating thereto, a defendant who relies for defense upon the relationship of any infant to himself, shall have the burden of proof as to such relationship.

SEC. 8. *Violation a gross misdemeanor.*—Every person who violates any of the provisions of this act shall upon conviction of the first offense be guilty of a misdemeanor. The second or subsequent offense shall be a gross misdemeanor.

SEC. 9.—This act shall take effect and be in force from and after its passage.

SEC. 10.—All acts or parts of acts inconsistent herewith are hereby repealed.

F. ADMINISTRATION OF MINNESOTA'S LAWS FOR CHILDREN OF ILLEGITIMATE BIRTH

FROM AN UNPUBLISHED REPORT OF THE UNITED
STATES CHILDREN'S BUREAU

The responsibility for care of children of illegitimate birth was undertaken as a result of legislation recommended by the Children's Code Committee and passed in 1917. Although the law confers upon the Board of Control neither custody nor guardianship of the child born out of wedlock it makes it "the duty of the board of control when notified of a woman who is delivered of an illegitimate, or pregnant with child, likely to be illegitimate when born, to take care that the interests of the child are safeguarded, that appropriate steps are taken to establish his paternity, and that there is secured for him the nearest possible approximation of the care, support and education that he would be entitled to if born of lawful marriage. For the better accomplishment of these purposes the board may initiate such legal or other action as is deemed necessary; may make such provision for the care, maintenance and education of the child as the best interests of the child may from time to time require, and may offer its aid and protection in such ways as are found wise and expedient to the unmarried mother approaching motherhood."¹

¹ *Session Laws of Minnesota 1917*, chap. 194.

Satisfactory administration of this provision is dependent upon complete and prompt notification of births. The requirement that maternity hospitals report all admissions of unmarried mothers and births of children born out of wedlock has been useful. It is recognized, however, that many illegitimate births do not occur in maternity hospitals. The birth registration law requires information as to the legitimacy of the child, and although the State registrar of vital statistics, and local registrars, are prohibited from giving out information as to the illegitimacy of a child except on court order, this prohibition was in 1925¹ withdrawn as applied to the Board of Control, which now receives such reports routinely from the State Registrar. However, since birth certificates need only be sent to the State Registrar monthly it is not unusual for the child to be several weeks old before his birth is made known to the Board of Control.

Immediately upon receiving notice of the birth or impending birth of a child out of wedlock the Children's Bureau notifies the child welfare board of the county in which the mother is living so that plans for her may be worked out at once. Thereafter the case work with the mother is the responsibility of the child welfare board under the general supervision of the Children's Bureau. A duplicate copy of the child welfare board's contact with the girl is sent to the Children's Bureau where a central file is maintained of all unmarried mothers and their children referred to the Bureau since January 1, 1918.

During the sixteen years of its work for unmarried mothers and their children the Children's Bureau and the State Board of Control have adopted a number of policies which govern the work of the Bureau. The policy with regard to the 3 months' nursing period has already been described. Others are as follows: -

1) In order to prevent duplication in work it has been decided that the individual county child welfare boards should assume all responsibility for the care and assistance of unmarried mothers who are residents of the county. The bureau assumes responsibility for intercounty cases presenting special problems, and through its field agents will assist any county in its case work or give any other help that is needed.

¹ *Laws of 1925*, chap. 190, par. 6.

2) The responsibility of the State Board of Control for the child born out of wedlock ceases when the child (a) is legitimated through marriage of its parents and a form stating the date and place of this marriage and admitting the paternity of the child is signed by the father and filed with the State Registrar; (b) is adopted; (c) is legally separated from its mother and guardianship has been assumed by an authorized agency caring for children; (d) leaves the State; (e) dies, or is stillborn; (f) is satisfactorily adjusted in his home; is being adequately supported by his mother or relatives, and is at least 8 years of age, and the Bureau has no funds in trust or is receiving no monthly allowance from the father.

3) The bureau has discouraged judgments for a lump sum payment from an adjudged father unless such sum with accrued interest is adequate to support the child until he is 16 years of age. All such payments must be made to the State Board which holds the money in trust for the children. The bureau urges that \$1,500 should be considered the minimum amount that should be accepted and that every effort should be made to obtain more. Continuing monthly payments throughout the period required by law (until the child is 16 years of age) are considered more desirable than small lump sum payments.

4) Settlements out of court without an adjudication of paternity shall be discouraged by the Children's Bureau.

5) If a child born out of wedlock is adopted by another person and the mother of the child is thus released from further responsibility, the father is likewise released from further requirement for support.

In a study of the work of 6 child welfare boards, including those of Hennepin and Ramsey Counties, it was found that from one-quarter to one-half of the total number of cases under the care of the individual boards were those of unmarried mothers and their children. A similar condition exists in the State Children's Bureau. Of the 8,084 cases of all kinds reported to the Bureau in 1934, about 39 per cent were those of unmarried mothers. The records of the Bureau showed that from January 1, 1918 to June 30, 1934 a total of 22,636 cases involving illegitimacy had come to the attention of the Bureau, the average number reported each year being about 1,400. It is the

opinion of the director of the Bureau that this number represents with fair accuracy the total number of illegitimate births in the State.

Since the Board of Control is specifically charged with the responsibility for initiating action for the establishment of paternity, this problem is given particular attention by the Children's Bureau and the county child welfare boards. The law provides that "a complaint shall be filed and all further proceedings had either in the county where the woman resides or in the county where the alleged father resides, or in the county where the child is found if it is likely to become a public charge upon such county."¹ In practice, action is usually taken in the county where the mother resides. Since it is the State that is interested in determining parentage the county attorney represents the child in these cases and the mother is the complaining witness.

Reports of the Children's Bureau show that, in spite of the efforts to establish paternity, the number of children for which this has been accomplished is not large. For the 6 year period from June 30, 1924 to June 30, 1930, paternity had been established for from one-fifth to one-third of the children coming to the attention of the department.

For the children born 1930-32 an even better record was made as paternity was established in 40.6 per cent of the 3,011 cases reported to the Bureau during this period. In 619 cases paternity was established by court action but in the remainder it was determined (1) through acknowledgement and affidavit, (2) by verbal admissions and (3) by marriage of parents.

Following an establishment of paternity an order is made by the judge of the district court specifying the amount and method of payment of support to be paid by the adjudicated father. The statutes provide that such payments shall be made to the Board of Control, to the county welfare board or to the duly appointed guardian of the child. In practice, practically all payments are ordered made to the county child welfare boards.

In the biennial ended June 30, 1934, a total of \$136,699 was collected by the Children's Bureau and the Child Welfare Boards of Hennepin, Ramsey and St. Louis counties for the support of children born out of wedlock. This was less by more than one-quarter of the

¹ *Laws 1921*, chap. 489.

amount collected in the preceding biennium. Monthly payments are the most usual method of payment and these are usually ordered to continue until the child is 16 years of age. The amounts vary from \$5 to \$20 a month depending upon the financial circumstances and earning capacity of the father. The usual order at the present time is from \$10 to \$15 a month. Many of the orders are made "until further order of the court" which makes it possible to adjust the amount to the changing needs of the child and to changes in the financial situation of the father. Confinement expenses are usually included in the court order over and above the monthly payments. Although \$1,500 has been considered the minimum amount acceptable in a lump sum it has sometimes been found necessary to accept less than this. Lump sum payments have varied from \$100 to \$2,500, although very few have been less than \$500.

The plan of making the Children's Bureau or the county child welfare boards responsible for the administration of funds paid for the support of children born out of wedlock means that the money will actually be used for the child and not be dissipated by an irresponsible or unreliable mother.

Court action to enforce support of a child for whom paternity has been established may be taken as a contempt of court proceeding or on a warrant issued following a complaint for non-support. The statute provides "If the defendant fails to comply with any order of the court, hereinbefore provided for, he may be summarily dealt with as for contempt of court, and shall likewise be subject to all penalties for failure to care for and support such child, which are or shall be imposed by law upon the father of a legitimate child of like age and capacity, and in case of such failure to abide any order of the court, the defendant shall be fully liable for the support of such child without reference to such order."¹ Legal action on the whole has not been resorted to except in rare instances where it has been felt that the failure to make payments was unjustified. It has been the attitude of the Children's Bureau that a man should be assisted in every way in meeting his obligations before legal pressure is exerted, and that only those cases should be brought before the court in which something can be accomplished by the action.

¹ *Laws 1921*, chap. 489.

Money collected by the Children's Bureau for the State Board of Control may be paid to the mother on a monthly basis or deposited in the Social Welfare Fund and paid out as needed. Checks may be made out directly to the mother or paid through the county child welfare board. The Social Welfare Fund is in reality money held in trust by the board of control for the benefit of "its wards or beneficiaries." It was created following authorization by the legislature of 1923 and according to the law "shall be deposited at interest, held, or disbursed as hereinafter provided." All monies received for support of children born out of wedlock are deposited in this fund in the State Treasury and twice each year the board of control files with the State Treasury an estimate of the amount of the fund to be held in the treasury during the succeeding 6 months' period, subject to current disbursement. The remainder of the fund is placed at interest which is credited to the individual accounts once each year. On June 30, 1934, the amount in the Social Welfare Fund belonging to children born out of wedlock amounted to \$160,584.

It sometimes happens that a small amount of money has been held on deposit for a child who has been adopted or has died. In the case of death it has been the policy of the State Board of Control to reimburse the mother for all expenses incurred in the care of the child through its illness and burial and then to return the remaining amount to the father of the child. When a child has been adopted, the Bureau has required that the adoptive father be appointed the legal guardian of the child's property and the funds remaining to the child's credit are then transferred to him.

It has been generally conceded that mortality is much greater among children of illegitimate birth than among legitimate children. Yet it is interesting to see what has happened to such mortality rates since greater protection was thrown about the child of illegitimate birth in Minnesota. In 1915, 13 per cent of the illegitimate children born alive died under the age of 2 years while only 7.8 per cent of the legitimate children died under 2 years of age. In 1925, 7 years after the protective program was put into operation, 10 per cent of the illegitimate children born alive died under the age of 2 years and 6.7 per cent of the legitimate children. In 1929, 7.9 per cent of the illegitimate children born alive died under the age of 2

years and 5.7 per cent of the legitimate children. Thus we find a drop of from 13 per cent to 7.9 per cent in 14 years for the child born out of wedlock and of from 7.8 per cent to 5.7 per cent for the legitimate child. There seems little question but that the safeguards set up in Minnesota through its laws regulating maternity hospitals, infants' homes, boarding homes, as well as those specifically for the welfare of the child born out of wedlock have been worthwhile not only as social measures but also as a means of decreasing the mortality rates for these children.

13. The New York Illegitimacy Law of 1925

"AN ACT TO AMEND THE DOMESTIC RELATIONS LAW, IN RELATION TO THE SUPPORT AND EDUCATION OF CHILDREN BORN OUT OF WEDLOCK, AND REPEALING CERTAIN PROVISIONS OF LAW INCONSISTENT THEREWITH

NEW YORK LAWS OF 1925, CHAP. 255

SECTION 119. *Definitions*.—(1) A child born out of wedlock is a child begotten and born: (a) Out of lawful matrimony; (b) while the husband of its mother was separate from her a whole year previous to its birth; or (c) during the separation of its mother from her husband pursuant to a judgment of a competent court.

2) When the word "child" is used in this article it shall refer to a child born out of wedlock.

3) When the word "mother" is used it shall refer to the mother of a child born out of wedlock.

SEC. 120. *Obligation of parents; liability for support and education*.—(1) The parents of a child born out of wedlock are liable for the necessary support and education of the child. They are also liable for the child's funeral expenses. The father is liable to pay the expenses of the mother's confinement and recovery, and is also liable to pay such expenses in connection with her pregnancy as the court in its discretion may deem proper. In case of the neglect or inability of the parents to provide for the support and education of the child, it shall be supported by the county, city or town chargeable therewith, under the provisions of the poor law.

2) If the father dies, an order of filiation or a judicially approved settlement made prior to his death shall be enforceable against his estate in such amount as the court may determine, having regard to

the age of the child, the ability of the mother to support and educate it, the amount of property left by the father, the number, age and financial condition of the lawful issue, if any, and the rights of the widow, if any.

SEC. 121. *Agreement or compromise.*—(1) An agreement or compromise made by the mother or child or by some authorized person on their behalf with the father concerning the support and education of the child shall be binding upon the mother and child only when the court having jurisdiction to compel support and education of the child shall have determined that adequate provision is fully secured by payment or otherwise and has approved said agreement or compromise: Provided, however, that in the County of Erie all such agreements or compromises shall be approved by the county court of said county. The approval of the court shall not be required for an agreement or compromise made by a duly constituted official of a city under specific power heretofore granted by special act of the legislature applicable only to such city.

2) No agreement or compromise under this section shall be approved by the court until notice and opportunity to be heard has been given to the superintendent of the poor of the county or the overseer of the poor of the city or town where the mother resides or the child is found.

3) The performance of the agreement or compromise, when so approved, shall bar other remedies of the mother or child for the support and education of the child.

SEC. 122. *Proceeding to enforce obligation of father.*—(1) A proceeding to compel support and education in accordance with this article may be brought by the mother, or her personal representative, or, if the child is or is likely to become a public charge on a county, city or town, by a superintendent of the poor of the county, or an overseer of the poor of the city or town where the mother resides or the child is found. Complaints may be made in the county where the mother or child resides or is found or in the county where the putative father resides or is found. The fact that the child was born outside of the State of New York shall not be a bar to entering a complaint against the putative father in any county where he resides or is found, or in the county where the mother resides or the child is found. After the

death of the mother or in case of her disability, it may also be brought by the child acting through a guardian or next friend.

2) Proceedings to establish paternity of the child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the lapse of more than two years from the birth of the child, unless paternity has been acknowledged by the father in writing or by the furnishing of support: Provided, however, that a superintendent of the poor of a county or an overseer of the poor of a city or town shall be empowered to bring a suit in behalf of any child under the age of sixteen who is or is liable to be a public charge.

3) The complaint shall be made to, and for the purposes of this article jurisdiction is conferred upon, the children's court in the counties where such courts have been established under the children's court act of the State of New York; the county court in Chatauqua County, Ontario County, Monroe County, and Erie County, outside of the city of Buffalo, the court heretofore exercising jurisdiction in bastardy cases in the cities of New York, Buffalo, and Syracuse.

4) The complaint shall be in writing, or oral and in the presence of the complainant reduced to writing by the judge or the clerk of the court. It shall be verified by oath or affirmation of complainant.

5) The complainant shall charge the person named as defendant with being the father of the child and demand that he be brought before the court to answer the charge.

6) The court shall issue a warrant for the apprehension of the defendant, directed to any officer in the State authorized to execute warrants, commanding him without delay to apprehend the alleged father and bring him before the court, for the purpose of having an adjudication as to the filiation of the child, and such warrants may be executed in any part of the State. But in the discretion of the court, a summons may be issued as in civil cases, instead of a warrant. Such summons shall be personally served as directed by the court.

SEC. 123. *When defendant is arrested.*—(1) When the defendant is arrested he shall be taken before the court issuing the warrant, or, if he be arrested in another county, before the county judge, the judge

of the children's court, or a magistrate within that county. The court issuing the warrant or said judge or magistrate shall take from the defendant an undertaking in an amount not less than \$500 with surety in the form of a commercial surety bond or personal security approved by the court or cash or liberty bond collateral to the effect:

a) That, if the suit is instituted by the public authorities as provided in section 122, paragraph 1, the defendant will indemnify the county or city or town where the child was or may be born and every other county, city, or town against any expense for the support and education of the child or for the support of its mother during her confinement and recovery, and that he will pay any order of filiation that may be made or that the sureties will do so; or

b) That he will appear and answer the charge at the court which issued the warrant and obey its order thereon.

2) If a summons has been issued the defendant shall be required to appear in the court where the complaint has been made.

3) When the defendant is arrested in another county and does not give security as provided in paragraph 1 of this section, he shall be taken before the court which issued the warrant.

4) When either of the undertakings mentioned in paragraph 1 of this section is given, the court issuing the warrant or the judge or magistrate shall discharge the defendant and shall indorse a certificate of the discharge upon the warrant. If the defendant has been arrested in another county the judge or magistrate before whom he has been taken shall deliver the warrant and the undertaking, cash or liberty bond collateral, to the officer, who shall return it to the court issuing the warrant, by which the same proceedings shall be had, as if it had taken the undertaking.

5) If the defendant does not give an undertaking as provided in paragraph 1 of this section the court issuing the warrant may commit him to jail to be held to answer the complaint.

SEC. 124. [Provides procedure for adjournment.]

SEC. 125. *Effect of death or absence or insanity of mother.*—If, after the complaint has been made, the mother dies or becomes insane or can not be found within the State, the proceeding does not abate, but the child may be substituted as complainant.

SEC. 126. *Trial.*—(1) The trial shall be by the court without a

jury. Both the mother and the alleged father shall be competent to testify but the alleged father shall not be compelled to give evidence, and if either gives evidence he or she shall be subject to cross-examination. The court may exclude the general public from the room where proceedings are had, pursuant to this article, admitting only persons directly interested in the case, including officers of the court and witnesses.

2) If the defendant fails to appear, the security for his appearance shall be forfeited and shall be applied on account of the payment of the order of filiation, but the trial shall proceed as if he were present; and the court shall upon the finding of the judge make such orders as if the defendant were in court.

SEC. 127. *Order.*—(1) If the finding be against the defendant, the court shall make an order of filiation, declaring paternity and for the support and education of the child.

2) The order of filiation shall specify the sum to be paid weekly or otherwise, until the child reaches the age of sixteen. In addition to providing for the support and education, the order shall also provide for the payment of the necessary expenses incurred by or for the mother in connection with her confinement and recovery; for the funeral expenses if the child has died; for the support of the child prior to the making of the order of filiation; and such expenses in connection with the pregnancy of the mother as the court may deem proper.

SEC. 128. *Payment to trustee.*—The court may require the payment to be made to the mother, or to some person or corporation to be designated by the court as trustee, but if the child is or is likely to become a public charge on a county, city or town, the superintendent of the poor of that county or the overseer of the poor of that town shall be made the trustee. The payment shall be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court. The trustee shall report to the court annually, or oftener, as directed by the court, the amounts received and paid over.

SEC. 129. *Security—commitment—probation.*—(1) The court may require the father to give security by bond, with sufficient sureties approved by the court, for the payment of the order of filiation. In

case the action has been instituted by the county superintendent of the poor or the overseer of the poor, the defendant shall also be required to give security that he will indemnify the county, city or town where the child was or may be born and every other county, city or town against any expense for the support and education of the child or for the support of its mother during her confinement and recovery, or that the sureties will do so. In default of such security, when required, the court may commit him to jail, or put him on probation. At any time within one year he may be discharged from jail, but his liability to pay the judgment shall not be thereby affected.

2) Where security is given and default is made in any payment the court shall cite the parties bound by the security requiring them to show cause why judgment shall not be given against them and execution issued thereon. If the amount due and unpaid shall not be paid before the return day of the citation, and no cause be shown to the contrary, judgment shall be rendered against those served with the citation for the amount due and unpaid together with costs, and execution shall issue therefor, saving all remedies upon the bond for future default. The judgment is a lien on real estate and in other respects enforceable the same as other judgments. The amount collected on such judgment or such sums as may have been deposited as collateral, in lieu of bond when forfeited, may be used for the benefit of the mother or child, as provided for in the order of filiation.

SEC. 130. *Contempt process.*—The court also has power, on default as aforesaid, to adjudge the father in contempt and to order him committed to jail in the same manner and with the same powers as in case of commitment for default in giving security. The commitment of the father shall not operate to stay execution upon the judgment of the bond.

SEC. 131. *Continuing jurisdiction.*—The court shall have continuing jurisdiction over proceedings brought to compel support and education and to increase or decrease the amount fixed by the order of filiation, until the judgment of the court has been completely satisfied.

SEC. 132. *Support by mother.*—(1) If a mother of a child born out of wedlock be possessed of property and shall fail to support and edu-

cate her child, the court having jurisdiction, on the application of the guardian or next friend of the child or, if the child shall be chargeable or likely to become chargeable, of the officers mentioned in section 122, may examine into the matter and after a hearing may make an order charging the mother with the payment of money weekly or otherwise for the support and education of the child.

2) The court may require the mother to give security, by bond, with sufficient sureties approved by the court, for the payment of the order. In default of such security, when required, the court may commit her to jail, or put her on probation. At any time within one year she may be discharged from jail, but her liability to pay the judgment shall not be thereby affected.

3) Nothing in this section shall be deemed to relieve the father from liability for support and education of the child in accordance with the provisions of this article.

SEC. 133. [False declaration by mother as to identity of father punishable as perjury.]

SEC. 134. [Provides that court may place the father or mother on probation instead of imposing sentence or of committing them to jail, or as a condition of release from jail.]

SEC. 135. [Fact that complaining mother or child resides in another state not a bar to jurisdiction, if defendant is a resident of New York.]

SEC. 136. [Provides for appeals in all cases from any final order or judgment of any court having jurisdiction of filiation proceedings.]

SEC. 137. *Prosecuting official*.—It shall be the duty of the county attorney, or the attorney designated by the board of supervisors, or the corporation counsel of a city, in the county, city or town in which the complaint is made to prosecute either in person or by an assistant all cases relating to children born out of wedlock where the complainant is a poor law official.

SEC. 138. *General provisions*.—In all records, certificates or other papers hereafter made or executed, other than birth records and certificates or records of judicial proceedings in which the question of birth out of wedlock is at issue, requiring a declaration by or notice to the mother of a child born out of wedlock or otherwise requiring a reference to the relation of a mother to such a child, it shall be

sufficient for all purposes to refer to the mother as the parent having the sole custody of the child, and no explicit reference shall be made to illegitimacy.

SEC. 139. *Construction.*—All provisions of the penal law or of the code of criminal procedure or other statutes inconsistent with or repugnant to the provisions of this article shall be considered inapplicable to the cases arising under this article.

14. The Authority of the Pennsylvania Department of Public Welfare To Refuse a License to a Maternity Hospital

JANES v. SECRETARY OF WELFARE OF THE COMMON-WEALTH OF PENNSYLVANIA

39 Dauphin County Reports 32 (1934)

Facts.—To the commencement of these proceedings the plaintiff maintained and operated a maternity hospital known as Veil Hospital at Corry, Erie County, Pennsylvania; also at Langhorne, Bucks County, Pennsylvania; and since November 15, 1929, he acquired and has since owned, maintained and operated a maternity hospital at West Chester, Chester County, Pennsylvania, known as the Veil Hospital. . . .

The plaintiff applied for and was granted a hearing, prior to the refusal of the said secretary of welfare to grant the license; numerous witnesses were called on behalf of the secretary of welfare and the applicant, all of whom were subject to cross-examination. . . .

The said application of the plaintiff for a license to conduct said maternity hospital under the provisions of the Act of May 6, 1929, P. L. 1561, was refused by the defendant "for the reason that the department of welfare is not satisfied that the applicant for such license is a proper person to hold such license. . . ."

In the Veil Hospital only young women of essentially sound morals are accepted—those who through youthful passion have made a misstep and are anxious for another chance.

From the circular issued by the plaintiff it appears that the purpose of the Veil Hospital is to shield the secret of a girl's misfortune and by massage to remove the scars left after parturition; that those scars are a serious handicap; the possibility of a disclosure

is always great in case of serious illness or accident. It is further alleged in this circular that the hospital caters to the better class of unmarried mothers and recommends that the best results are obtained when the mother can be returned to her home and friends with unblemished name, and the child placed in a home with its best interests at heart and the means to educate and fit it for normal wholesome life. . . .

The plaintiff has not provided and kept a register (other than loose leaf) as provided by law, wherein he shall enter the name and address of every maternity patient, the date of admission and discharge of every patient, the name and sex of every child born or boarded on the premises, date of birth, names and residence of the father and mother, date of marriage, the date of the removal of the child, the name and address of the person taking it away, and if relinquished by the mother, the date of relinquishment, the name and address of the person to whom the child is relinquished and reason therefor, and if adopted, the date of adoption, the name of person signing the consent of adoption, and the name and address of the person adopting the child. . . .

During the years 1930 and 1931 a number of babies were delivered or placed in the custody of foster parents in the State of New York. . . . On February 25, 1929, the assistant director of the department of charities at Albany, N. Y., wrote the following letter to the Veil Hospital then operating in Langhorne:

My attention has just been called to a booklet entitled "Superior Babies" issued by your institution, which indicates that you make a practice of placing children for adoption. I am informed that copies of the pamphlet have been circulated in this state.

In case you are intending to place children in the State of New York you should take notice of the provisions of section 306 of the state charities law, copy of which is sent to you under separate cover. You will observe that an institution such as yours is prohibited from placing children in the State of New York unless licensed to do so by the Board of Charities.

On March 3, 1931, the supervisor for placed out children for the State of New York, wrote the following letter to the superintendent of the Veil Maternity Hospital.

I have recently learned from different sections of this state that children have been placed from your hospital in foster homes even though you have not com-

plied with the laws of this state in regard to the placement of children, and therefore are without authority to place any children in the State of New York. I understand that you told Miss Mary S. Larrabee, Director Bureau of Children, Department of Welfare, Harrisburg, Pa., that you never had any statement from this department informing you that you were without authority to place children in this state. I am enclosing herewith actual carbon copy of the letter sent to you on February 25, 1929. Under another cover I am sending you another copy of the State Charities Law, copy of which was sent to you on February 25, 1929.

It is the plan of the Veil Hospital to let the babies go into the foster parents' home for a period of from one to six months, or longer if desired, before adoption is completed.

Of the fifteen hundred babies born in the Veil Hospital in Pennsylvania up to the time of the hearing seventy-seven per cent were left for disposal by the Veil Hospital. . . .

The mothers who left their babies at the Veil Hospital for adoption signed a blank form of consent; the date of adoption and the name of the foster parents to be added thereto by the manager of the Veil Hospital when adoption could be secured. . . .

Discussion.—The defendant relies upon the Act of May 6, 1929, P. L. 1561, for authority on her part to refuse to license the Veil Maternity Hospital which provides, *inter alia*:

SECTION 2. No person or persons, and no . . . organization whatsoever, incorporated or unincorporated, shall maintain, operate, or conduct any maternity home or hospital, without having a license therefor issued by the Department of Welfare of this Commonwealth.

SEC. 4. The Department of Welfare shall, when satisfied that the applicant or applicants for such license are proper persons, and that the place sought to be used as a maternity home or hospital is a suitable place for such purpose, and is properly equipped therefor, and when all the requirements of this act and *the rules and regulations of the department have been complied with*,—(italics are ours)—issue such license, and keep record thereof and of the application therefor.

SEC. 8. The Department of Welfare shall, with the approval of the State Welfare Commission, make and adopt rules and regulations, not inconsistent with this act, for the issuance and removal of such licenses, for the proper maintenance, operation, and conduct of such maternity homes or hospitals, for the effective enforcement thereof, and for the preservation, filing, and indexing of the records and means of identification of infants, required by the act approved the twenty-ninth day of April, one thousand nine hundred and twenty-five

(*Pamphlet Laws*, three hundred and fifty-eight), entitled "An act for the identification of infants born in places where maternity cases are handled; providing for the taking of finger or foot prints of infants; and the places with the enforcement thereof."

SEC. 10. The Department of Welfare and its duly authorized agents, and the local health authorities, shall have the right, at any time, to enter, visit and inspect the premises of any maternity home or hospital.

SEC. 11. Every licensee of a maternity home or hospital shall keep a record, in a form prescribed by the Department of Welfare, of the name and address of every patient received, of the date of admission, of the date of birth and name of every infant born therein, of the date of discharge of every patient, *and the names and addresses of the person or persons, if other than the parent or parents of any infant, to whose care said infant was discharged.* . . . (Italics are ours.)

Constitutionality of the Act of 1929.—In approaching the construction of the Act of 1929, we are guided by well established rules. We should so far put ourselves in the position of those whose words we are interpreting as to be able to see what those words relate to. . . .

We will, therefore, first examine what the law was in this behalf previous to the passage of the Act of 1929. By the Act of April 26, 1893, *P. L.* 24, Section 2, 35 *P. S.* 334, 335, it was enacted that:

The proprietor of every hospital, hospital ward or other private place for lying-in purposes, to which a license has been granted according to section one of this act, shall, within five days after the birth of any child, report to the said board of health the date and place of such birth, the name, sex and color of the child.

Under this act it was lawful for the board of health of any locality to license any person or persons, to establish and keep a lying-in hospital, ward or other private place for the reception, care and treatment of women in labor. . . .

The act further provides that, having certified that the applicant is a proper person and the premises are suitable and properly arranged for such purpose, the said board of health shall grant a license for the purpose above mentioned upon the payment of a fee of five dollars, which shall continue for a period of two years, subject to be revoked by the board of health granting the same upon the violation of rules and regulations enacted by the said board of health for the government of said hospitals, hospital wards or other private places. The act further provides that the proprietor of the hospital shall

keep a record in a book for that purpose, containing the full name and address of each person admitted, the date of admission, the date of birth of every child, the date of its removal, and the place such child shall be removed. . . .

By the Act of April 29, 1925, *P. L.* 358, section 1, a system of identification was adopted by finger or foot prints which shall be taken and recorded for purposes of identification and such records shall be chronologically filed and indexed in the name of the parents of such child.

A study of the Act of 1893 and the Act of 1929 which we have under interpretation, clearly shows that the regulation of proprietors of maternity hospitals was under consideration more than forty years ago. Evidently the Legislature in 1929 was not satisfied with the enforcement of the Act of 1893 and therefore by the Act of 1929 the regulation of maternity hospitals was vested in the department of welfare of the Commonwealth of Pennsylvania. . . .

We think another purpose for the enactment of the Act of 1929 was that the Legislature found it important to have more rigid inspection of these maternity hospitals than theretofore existed in local boards of health; and this appears more fully in the report to the General Assembly meeting in 1927 by the commission appointed by the Governor under the authority of the Act of July 11, 1923, *P. L.* 994, to study and revise the statutes of Pennsylvania relating to children. . . .

It seems from this report that outside of cities of the first and second class the Act of 1893 was not efficiently enforced by the local boards of health, and for that reason the Act of 1929 was passed.

It is fundamental law that the plaintiff, in seeking to hold the act to be unconstitutional, has the burden to so prove beyond all doubt. . . .

The plaintiff does not assert that the act does not have a real or substantial relation to the public health, public morals and good order; he does not assert that the commonwealth is not justified in interposing its authority in the establishment and operation of maternity hospitals and homes in this state; nor does he assert in his pleadings that any rule or regulation adopted by the department of welfare pursuant to the provisions of the act is not germane to the

purpose of the act or reasonably necessary for the accomplishment of its purpose, or that such rule or regulation is unduly oppressive upon the plaintiff, although in the brief of his counsel that question is raised. . . .

Plaintiff does assert, however, that the act does not provide for a hearing by the department of welfare upon an application for a license under said act in case of a decision by the department of welfare adverse to the applicant; that the act does not provide for an appeal from the decision of the department and that such failure invades his constitutional rights to acquire, possess and protect his property, enjoy and defend his liberty, and deprives him of his property without due process of law. . . .

The plaintiff therefore contends that the Act of 1929 is in violation of the "due process" clauses of the state and federal Constitutions. . . . Section 1 of Article 1 of the Constitution of Pennsylvania provides as follows:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness. . . .

We think the Act of 1929 does not violate section 1 of Article I of the Constitution. . . .

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides, *inter alia*:

. . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

The plaintiff does not deny the right of the public to regulate the business of the plaintiff in a reasonable and proper way; that if the business is conducted in a lawful manner there is a property right in the plaintiff which cannot be taken away without due process of law; and that the methods whereby the public may regulate a lawful business are different from those by which it may regulate an unlawful business. . . .

The Act of 1929 applies uniformly to all persons conducting maternity hospitals; it confers upon the department of welfare the

power to make reasonable rules and regulations for the conduct of such hospitals (see section 8 of the act); it is conceded to be a police regulation. The plaintiff was notified he was not conducting his hospital in the manner prescribed by the Act of 1929 and the said rules and regulations, and he was given a hearing. We think the record shows that the due process clauses in the Constitutions of Pennsylvania and the United States have been complied with. . . .

We think that a hearing before the secretary of welfare satisfied the "due process" clause in the Constitution of Pennsylvania and the United States. . . .

In the instant case the secretary of welfare did not attempt to pass upon plaintiff's application for a license until she had heard all the evidence touching his professional responsibility and his failure to comply with the act. . . .

We do not understand how the validity of the Act of 1929 may be saved if the present proceeding in this court be treated as an appeal from the order of the secretary of welfare. . . .

The question in this case is not that of taking from the plaintiff a license which he already had because of misconduct or for other reasons, but is whether a license shall be granted to the plaintiff for which he must show himself, in the first instance, to be entitled. If a license is refused he still was entitled to a day in court and a hearing upon his application. If he established at the hearing that any right guaranteed to him by the Constitution of the United States or of this commonwealth was invaded, he may appeal to the equitable power of this court under the principles laid down in *Plymouth Coal Co. vs. Pennsylvania*. . . . These decisions hold that when the department refused to issue a license to him, he had the right, and he has invoked that right, to resort to this court and to obtain from this court a judicial review of the legality of the action of the department. And this is all that the due process clause requires. . . .

It is further urged that the Act of May 6, 1929, *P. L. 1561*, does not fix or prescribe any standards of qualification by which the department of welfare may determine who are proper persons to hold licenses under said act. It must not be overlooked that section 8 of the act authorizes the department of welfare, with the approval of the state welfare commission, to make and adopt rules and regula-

tions. . . . These provisions of the act were followed by the department of welfare by establishing rules and regulations which have been heretofore referred to. . . .

In comparing the rules and regulations of the department of welfare with the provisions of the Act of 1893 we find said rules and regulations follow substantially the procedure outlined in said act. . . .

We have already discussed this question at some length when considering the rules and regulations adopted by the department of welfare, authorized by section 8 of the act. It is only necessary to say that the modern trend of legislation (sustained by the courts) is that certain powers may be delegated by the legislature to be performed consistent with the provisions of the act itself. The best illustration is the creation of the public service commission with very general powers, and many other organizations created by legislative mandate with power to make rules and regulations consistent and necessary for the efficient performance of the duties delegated by the legislature. We are of opinion therefore that the power delegated under the Act of 1929 to the department of welfare to make rules and regulations (which power was also delegated to the several boards of health by the act of 1893) does not render the act unconstitutional and void under Article II, section 1 of the Constitution. . . .

It must be remembered, however, that the action of the secretary of welfare must not be arbitrary and so long as she acted within her power and in good faith her action constitutes due process of law: *Eiku vs. United States*, 142 U.S. 651. After considering the evidence we find that all of the rules and regulations made by the secretary of welfare are reasonable, and that they are within the scope of the powers conferred on the department of welfare by the Act of 1929. We do not find that she abused her discretion or acted fraudulently. It follows, therefore, that the motion of the commonwealth to dismiss the preliminary injunction must be sustained. We think the plaintiff had his day in court at the hearing before the secretary of welfare hereinbefore referred to. . . .

The evils which the Act of May 6, 1929, P. L. 1561, seeks to prevent, eliminate or minimize are unnecessary mortality among

mothers and infants in this state, loss of identity, and by such loss of identity, loss of rights, privileges, and immunities guaranteed to every child born within this commonwealth, by the Constitution of Pennsylvania and the Constitution of the United States.

Objection is made that there is nothing in the Act of 1929 authorizing the department of welfare to regulate the disposition of the children born in the plaintiff's hospital. We think the unfortunate babies born there have a right to be properly placed in homes if not wanted by their unfortunate mothers. Such babies have the right to live, have a right to the preservation of their health, including their eyesight, and identity; and we cannot concede or agree that the department of welfare of the Commonwealth of Pennsylvania is without authority to regulate the disposition of these unfortunate little ones. . . .

We think it is fairly well established that the Veil Maternity Hospital is properly located and equipped to perform its functions. It is also well established that the personal reputation of the plaintiff and his wife is good; they are good people so far as that is concerned. But when we come to consider their manner and method of operating the Veil Hospital that is quite another proposition.

We find that the plaintiff has refused or neglected to obey the laws of this commonwealth relating to the management of his hospital from the time he entered Pennsylvania in 1921 down to the time when the case was heard before the secretary of welfare. We find no evidence that he ever applied for and obtained a license from the board of health at Corry or at Langhorne to operate his hospital, as required and provided in the Act of 1893 from which we have frequently quoted. . . .

At the time of the hearing and prior thereto the records of the patients in his hospital and the babies born were kept on loose sheets of paper. If these loose sheets would be lost the identity of the babies born would be lost forever, whereas if they are kept in a book or register, as required by the Act of 1893, and now by the rules and regulations of the department of welfare, then a permanent record . . . would be made and would not easily be lost. The babies born in this hospital have the right to have their identity preserved and it is important that it should not be lost. . . .

We further find that the plaintiff has been in the habit of placing children in homes in New York State without first procuring a license so to do, in violation of the laws of that state, as appears in our 19th finding of fact, and in Exhibit No. 7-14-D. Of this violation of the law he was notified by the department of charities of the State of New York. . . . We pass without comment the testimony that children were also sent to Massachusetts, New Jersey and Ohio, in violation of the laws of those states. All this evidence goes to the question of whether the plaintiff is a fit person to conduct a maternity hospital. . . .

We refer now to Exhibit No. 2, which is headed "Babies for Adoption," and was issued in September 1924 at Corry, from which we quote:

. . . . Some people have even thought that The Veil is a shelter for moral outcasts or habitual offenders against chastity. Such an idea is farthest from the truth, as only the young woman of essentially sound morals is accepted; she who, through ignorance or youthful passion, has made a mis-step and is anxious for another chance. . . .

And again from page 7 of this circular, we quote:

To the young woman whose *social standing* depends upon the success with which her motherhood is *concealed*, it is a matter of no small importance to have the verification of so prominent a physician that all visible signs of pregnancy can usually be prevented by massage. In the case of a girl who must shield the secret of her misfortune these scars are a serious handicap. The possibility of a disclosure is always great in case of serious illness or accident. . . . (Italics are ours.)

That the plaintiff has not always been honest even in disposing of the babies appears in Exhibit No. 3, issued by the Veil Hospital in 1925, from page 14 of which we quote:

Sally Lou and Marlon were recently adopted into a home as twins. Sally Lou, the girl, is five weeks older than Marlon, but they pass for twins very nicely, and we are sure they bring their foster parents a million dollars' worth of pleasure.

There is nothing in this circular to indicate that the fact that these children were not twins was brought to the attention of the adopting parents, and how the plaintiff can justify this deceit is beyond our comprehension. . . .

The conclusion we reach after reading his booklets which he

issued, being Exhibits Nos. 1 to 7 both inclusive, is that they constitute a message from the plaintiff to pregnant unmarried girls who can raise \$390 or more, and also is "though your sins be as scarlet" when you reach the Veil Hospital, when you return to your homes "they will be as white as wool." This may seem like an ethical question, but to the large number of babies born at plaintiff's hospital, for whom he has undertaken to find homes, it is intensely practical, and the way he performs this duty we think unfits him to conduct the Veil Maternity Hospital.

We find, therefore, that the plaintiff has not only violated some of the regulations of the department of welfare as to the keeping of records, disposition of babies, advertising that the Veil Hospital has babies for disposition, but also has violated the spirit and intent of the Act of 1929, section 8, and also the laws of sister states. . . .

15. The British Illegitimacy Law of 1926

"LEGITIMACY ACT,"¹ 16-17 GEORGE V, C. 60 (GREAT BRITAIN, STATUTES, 1926)

1.—(1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in England or Wales, render that person, if living, legitimate from the commencement of this Act, or from the date of the marriage, whichever last happens.

2) Nothing in the Act shall operate to legitimate a person whose father or mother was married to a third person when the illegitimate person was born.

3) The legitimation of a person under this Act does not enable him or his spouse, children or remoter issue to take any interest in real or personal property save as is hereinafter in this Act expressly provided.

4) The provisions contained in the Schedule of this Act shall have effect with respect to the re-registration of the births of legitimated persons.

¹ [In her book on *The Family and the State*, pp. 421-35, Miss Breckinridge has made conveniently available some of the most interesting of the speeches in Parliament on the Legitimacy Bill.—EDITOR.]

2. —(1) A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may, whether domiciled in England or elsewhere and whether a natural-born British subject or not, present a petition under the Legitimacy Declaration Act, 1858, and that Act, subject to such necessary modifications as may be prescribed by rules of court, shall apply accordingly.

2) A petition under the said Act may be presented by any such person as aforesaid to the county court instead of to the High Court, and the county court on such a petition being presented shall have all such jurisdiction as by the said Act is conferred upon the High Court:

Provided that, where a petition is presented to the county court, the county court, if it considers that the case is one which owing to the value of the property involved or otherwise ought to be dealt with by the High Court, may, and if so ordered by the High Court shall, transfer the matter to the High Court, and on such transfer the proceeding shall be continued in the High Court as if it had been originally commenced therein.

3.—(1) Subject to the provisions of this Act, a legitimated person and his spouse, children or more remote issue shall be entitled to take any interest—(a) in the estate of an intestate dying after the date of legitimation; (b) under any disposition coming into operation after the date of legitimation; (c) by descent under an entailed interest created after the date of legitimation; in like manner as if the legitimated person had been born legitimate.

2) Where the right to any property, real or personal, depends on the relative seniority of the children of any person, and those children include one or more legitimated persons, the legitimated person or persons shall rank as if he or they have been born on the day when he or they became legitimated by virtue of this Act, and if more than one such legitimated person became legitimated at the same time, they shall rank as between themselves in order of seniority.

3) Where property real or personal or any interest therein is limited in such a way that, if this Act had not been passed, it would (subject or not to any preceding limitations or charges) have devolved (as nearly as the law permits) along with a dignity or title of honour, then nothing in this Act shall operate to sever the prop-

erty or any interest therein from such dignity, but the same shall go and devolve (without prejudice to the preceding limitations or charges aforesaid) in like manner as if this Act had not been passed. This subsection applies, whether or not there is any express reference to the dignity or title of honour and notwithstanding that in some events the property, or some interest therein, may become severed therefrom.

4) This section applies only if and so far as a contrary intention is not expressed in the disposition, and shall have effect subject to the terms of the disposition and to the provisions therein contained.

4. Where a legitimated person or a child or remoter issue of a legitimated person dies intestate in respect of all or any of his real or personal property, the same person shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate.

5. Where an illegitimate person dies after the commencement of this Act and before the marriage of his parents leaving any spouse, children or remoter issue living at the date of such marriage, then, if that person would, if living at the time of the marriage of his parents, have become a legitimated person, the provisions of this Act with respect to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimated person, (including those relating to the rate of death duties) shall apply as if such person as aforesaid had been a legitimated person and the date of the marriage of his parents had been the date of legitimation.

6.—(1) A legitimated person shall have the same rights, and shall be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate, and, subject to the provisions of this Act, the provisions of any Act relating to claims for damages, compensation, allowance, benefits, or otherwise by or in respect of a legitimate child shall apply in like manner in the case of a legitimated person.

2) Where the marriage leading to the legitimation of a child took place before the fourth day of January, nineteen hundred and twenty-six, and the father of the child died before that date, the child shall, for the purpose of determining rights to pension or additional

allowance under the Widows', Orphans' and Old Age Contributory Pensions Act, 1925, be deemed to have been a child of the marriage living at that date:

Provided that nothing in this subsection shall confer any right to claim any payment in respect of any period prior to the date of legitimation.

7. Where a legitimated person or any relative of a legitimated person takes any interest in real or personal property, any succession, legacy or other duty which becomes leviable after the date of legitimation shall be payable at the same rate as if the legitimated person had been born legitimate.

8.—(1) Where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, and the father of the illegitimate person was or is, at the time of marriage, domiciled in a country, other than England or Wales, by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in England and Wales be recognised as having been so legitimated from the commencement of this Act or from the date of the marriage, whichever last happens, notwithstanding that his father was not at the time of the birth of such person domiciled in a country in which legitimation by subsequent marriage was permitted by law.

2) All the provisions of this Act relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse, children and remoter issue of a legitimated person (including those relating to the rate of death duties) shall apply in the case of a person recognised as having been legitimated under this section, or who would, had he survived the marriage of his parents, have been so recognised; and, accordingly, this Act shall have effect as if references therein to a legitimated person included a person so recognised as having been legitimated.

3) For the purposes of this section, the expression "country" includes Scotland and any other part of His Majesty's Dominions, as well as a foreign country.

9.—(1) Where, after the commencement of this Act, the mother of an illegitimate child, such child not being a legitimated person, dies

intestate as respects all or any of her real or personal property, and does not leave any legitimate issue her surviving, the illegitimate child, or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.

2) Where, after the commencement of this Act, an illegitimate child, not being a legitimated person, dies intestate in respect of all or any of his real or personal property, his mother if surviving shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent.

3) This section does not apply to or affect the right of any person to take by purchase or descent any entailed interest in real or personal property.

4) Subsections (1) and (2) of this section shall apply to Scotland with the substitution of "heritable" for "real" and "moveable" for "personal," and the expression "intestate" therein occurring shall have the same meaning as in the Intestate Moveable Succession (Scotland) Act, 1855, provided always that nothing in this section shall affect the right of any person to succeed under any entail.

10.—(1) Nothing in this Act shall affect the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title.

2) Nothing in this Act shall affect the operation or construction of any disposition coming into operation before the commencement of this Act, or affect any rights under the intestacy of a person dying before the commencement of this Act.

11.—(1) For the purposes of this Act, unless the context otherwise requires:—

The expression "legitimated person" means a person legitimated by this Act;

The expression "date of legitimation" means the date of the marriage leading to the legitimation, or where the marriage occurred before the commencement of this Act, the commencement of this Act;

The expression "disposition" means an assurance of any interest in property by any instrument whether inter vivos or by will;

The expression "intestate" has the meaning as in the Administration of Estates Act, 1925, and "will" includes "codicil";

The expression "entailed interest" has the same meaning as in the Law of Property Act, 1925.

12.—(1) This Act may be cited as the Legitimacy Act, 1926.

2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-seven.

3) The provisions of this Act shall, save as therein otherwise expressly provided, extend only to England and Wales.

16. Official Guardianship of Illegitimate Children in Certain Foreign Countries

OFFICIAL GUARDIANSHIP OF ILLEGITIMATE CHILDREN, CHILD WELFARE
COMMITTEE, LEAGUE OF NATIONS, APRIL, 1932
C. 265. M. 153. 1932. IV

Introduction.—The Child Welfare Committee, at its seventh session, decided "to place the question of illegitimate children in the forefront of the agenda of its next session, and steps will accordingly be taken to collect the fullest possible information on the organisation and working of the system of official guardianship."

In accordance with these instructions, the Secretariat took from document C.P.E. 141 (1), which contains a statement of the position of illegitimate children in several countries, the list of countries which state that they have a special system of official guardianship to which illegitimate children, by the mere fact of their illegitimacy, are subject. These countries number seven: Austria, Finland, Germany, Portugal, Sweden, Switzerland, and the United States of America, so far as concerns Minnesota.

These countries have been requested to supply information on which the discussions of the Committee might be based. Replies have been received from all, with the exception of the United States as regards Minnesota. . . .

The information received shows that, in Austria, Finland, Germany and Switzerland, the official guardianship is collective in character—that is to say, the official guardian is concerned with more than one ward. Nevertheless, in Germany, where it is possible for guardianship to be transferred to a private guardian, a movement is on foot, particularly among voluntary relief societies, for a return to the system of individual guardianship organised on special lines.

In Sweden, during the years immediately following the introduction of the law, the *gardiens* (custodians) were unpaid and had charge of one child only; but the method by which professional *gardiens* are put in charge of several children is now regarded as preferable . . . [p. 1].

GERMANY¹

Organisation.—The administrative guardianship of illegitimate children instituted by the law of the Reich of July 9th, 1922, for the protection of children and young people, in force since April 1st, 1924, is the final achievement of a reform movement which had been developing for several decades for the better protection of illegitimate children. The steps taken were, successively: supervision of children placed in the families of strangers in return for payment, and there cared for and brought up (wards); the replacement of private guardianship by professional guardianship, leading up to collective guardianship.

Finally, a demand was made by a child welfare congress, organised in Berlin in 1918 by the principal German associations, that a law of the Reich should be immediately promulgated by the legislative body, instituting compulsory Offices for the Protection of Young People to undertake this duty as a public obligation (protection of every kind for necessitous children, orphans, wards, illegitimate children, and children in the care of public relief authorities).

Preliminary work on this law was begun in 1919, and in June 1922 the law of the Reich for the protection of children and young people was unanimously adopted. This law, apart from certain restrictions due to the financial difficulties of the public relief authorities, came into force on the date originally fixed, April 1st, 1924.

The law sets up a complete network of Offices for the Protection of Young People, acting in the name and on behalf of the community, whose duty it is to assist every child who does not receive from his family the education to which he is entitled. This principle, which is definitely stated in the preamble of the law, makes it clear that while, in the view of the law, the physical, moral and social

¹ This information has been taken from a report furnished by Professor Polligkeit, Gen. Secretary of the Deutscher Verein für Öffentliche und Private Fürsorge (Frankfort-on-Main).

education of the child continues to be the primary and natural duty of the parents, the State regards itself as bound to assume responsibility for the education of the child when his family is not able to do so itself, or when it neglects its duties in this respect, and when, further, the work of voluntary organisations is not adequate for the purpose [p. 3].

Duties and powers of administrative guardianship.—The rights and obligations of the administrative guardian are in principle the same as those of the private guardian under the Civil Code. He therefore possesses, conjointly with the mother, the right and duty to look after the person of the child, and it is his exclusive duty to administer the property of the minor and to represent him in law. The mother retains the right and obligation to look after the child personally and to bring him up. It is for her to choose the residence and religious belief of the child. The administrative guardian, being entrusted conjointly with the care of the child's person, acts as an adviser and must give advice to the mother and must help and supervise her. On the other hand, the administrative guardian alone is entrusted with the administration of the child's property; in the first place, he must enforce the child's right to maintenance as against persons bound to give such maintenance—in particular, the father. Partly with a view to relieving the Offices for the Protection of Young People, but principally in the interests of the child, the law provides (*Article 44*) that guardianship may be transferred by the administrative guardian to a private guardian if this appears to be in the interests of the child. In case administrative guardianship is withdrawn, an institution or association may be appointed guardian (*Article 47*). The intention of the authors of the law was to restrict the legal administrative guardianship of illegitimate children to cases where such a form of guardianship is necessary and where it is particularly appropriate and preferable to other forms. Legal administrative guardianship has the advantage that the illegitimate child possesses from his birth a guardian who is provided with all the knowledge, experience and necessary means for protecting him, and who can effectively intervene in any circumstances which may be specially dangerous for his existence and development.

The means of action of the existing legal administrative guardian-

ship of illegitimate children are increased by the fact that the Office for the Protection of Young People is at the same time entrusted with all measures of public relief to children. . . .

The Office for the Protection of Young People is advised of the birth of an illegitimate child by the Registrar of the place where the birth is recorded. If the office has not previously been in touch with the mother of the child, it interviews her as soon as possible in order to establish her personal status and ascertain the name and address of the father of the child. One of the first duties of the office is to find accommodation for the mother and the child in cases where the mother has been confined in a maternity home and where there is a question as to whether she can retain the child in order to nurse it.

Moreover, the Office for the Protection of Young People, in its capacity as administrative guardian, tries to find the father, endeavours to obtain his voluntary acknowledgment of paternity and his undertaking to maintain the child; in case of refusal, it brings a judicial action to establish paternity and to enforce the obligation to provide maintenance. There are relatively few cases in which the father cannot be designated by the mother. Local statistics show that the proportion is only from 10 to 15 per cent.

If the person designated by the mother as the father of the child refuses to acknowledge paternity voluntarily, the administrative guardian summons him before the ordinary courts.

When the administrative guardian possesses an executive order against the father of an illegitimate child on account of his voluntary acknowledgment of the obligation to provide maintenance, or of a legal decision compelling him to do so, the guardian endeavours to compel the father to make regular payments, if necessary by compulsory execution . . . [p. 5].

According to German law, the unmarried mother is also obliged to provide maintenance, but only after the father. The maternal parents (grandparents) are under the same obligation. In cases, therefore, where the father of an illegitimate child cannot be prosecuted for the payment of maintenance allowances, the administrative guardian must take action against the mother or her parents. As in

most cases, illegitimate children live with the mother (the average for Germany is 66 per cent) or with the maternal grandparents, maintenance is usually provided by them in kind.

In addition, it is the administrative guardian's duty, in order to provide for the subsistence of the illegitimate child, to uphold any rights accruing to the child from social insurance. . . .

While it is important to provide for the maintenance of the illegitimate child in order that it may be properly cared for and brought up and while this is the principal duty of the administrative guardian, the latter must also direct and supervise the entire education of the child. In this respect, he co-operates with the mother who, as stated above, does not possess the paternal power, but is primarily entrusted by law with the care of the child's person. So long as the mother retains the child, the guardian's duty is merely to see that the child receives suitable care and education and to advise the mother, but in case of need he must also insist that the child should be removed, if he considers this step to be necessary [p. 6].

In order as far as possible to provide suitable education for illegitimate children and to enable them to find a home, the Offices for the Protection of Young People, endeavour to profit by the provisions of the Civil Code regarding legitimization, adoption and the right to a surname. About 25 per cent of the illegitimate children are legitimated by the subsequent marriage of the parents. . . .

According to the German statistics, about 600,000 illegitimate children were under the administrative guardianship of the Offices for the Protection of Young People at the end of March 1930. The total number of illegitimate minors in Germany is estimated at a million, but there are no exact statistics on this subject. The difference between the total number of illegitimate children and that of administrative wards is explained by the fact that illegitimate children have been placed under administrative guardianship only since the Law for the Protection of Children and Young People came into force, and that only a part of the former wards have become administrative wards through the Office for the Protection of Young People being appointed their guardian [p. 7].

AUSTRIA

Organisation of general guardianship.—There are two forms of general guardianship:

a) *Collective guardianship or voluntary general guardianship.*—An Office for the Protection of Young People or association declares its readiness to undertake the guardianship of a specified group of children (illegitimate children of a certain religious denomination, etc.) should no qualified guardian be found. The guardianship court then appoints the organisation in question as guardian in each particular case.

b) *Legal guardianship or judicially-conferred guardianship.*—This form of guardianship only applies to illegitimate children and is mainly exercised by the Offices for the Protection of Young People (of the provinces or communes). The procedure is as follows: On application being made, the President of the competent court, by a judgment delivered in agreement with the local government authorities, confers once and for all the guardianship of a specified group of children—e.g., illegitimate children—on an Office for the Protection of Young People, or, particularly where no such office exists, on an association.

Duration of guardianship.—In districts where it has been adopted for all illegitimate children, general guardianship is exercised as of full right from the birth of the child, and only ends on his attaining his civil majority, that is, at the age of twenty-one.

On the birth of the child, the general guardian may, without having to wait for his appointment by a court, take the necessary steps on behalf of the newborn child—e.g., to ensure his maintenance. Such a system has obviously distinct advantages, as the child's interests are immediately put in the hands of a competent and experienced guardian.

Offices or associations exercising general-conferred guardianship.—In Austria, there are Offices for the Protection of Young People in almost all self-governing communes and towns of any size. The Vienna Municipal Office (*Zentrale Magistratsabteilung*) has eleven district sub-offices . . . [pp. 8-9].

Statistics.—In 1930, the *Vienna Municipal Office for the Protection of Young People* had charge of 25,844 wards. The sums recovered as

maintenance amounted to 1,955,636 schillings, as compared with 1,866,960 schillings for 25,283 wards in 1929 . . . [p. 9].

Conclusions.—The institution and organisation of general guardianship have given excellent results. Such guardianship, in particular, forms a systematic and effective safeguard for the interests of wards by ensuring that the child will be supported by his father. It should be pointed out that the general guardian endeavours, first of all, to secure voluntary acknowledgment of paternity (acknowledgment without legal proceedings) and the voluntary payment of maintenance. Only when no voluntary arrangement can be made does the guardian take the matter to court. In other cases, the general guardian is also obliged, in accordance with the law on maintenance, to take proceedings against the recalcitrant parent. Notwithstanding the serious economic crisis of recent years, the amounts recovered by way of maintenance have steadily increased concurrently with the growth of general guardianship. . . .

The fact that in many cases the mother has also been served with an order shows that professional guardianship authorities compel mothers also to do their duty towards their children. The reproach occasionally made that these bodies relieve unmarried mothers of an undue proportion of their obligations is thus unjustified.

FINLAND

In Finland, official guardianship is at present regulated by the Law on Illegitimate Children of July 27th, 1922, partially amended by the Law of December 9th, 1927.

Under the Law of July 27th, 1922, each commune has to appoint an "official guardian" for illegitimate children, together with a deputy and, if necessary, assistants; all these officials are paid by the commune (Article 14 of the Law).

Term of office.—The official guardian's term of office commences prior to the birth of the child, the expectant mother being bound to supply him with all information essential for protecting the child's rights (Article 17 of the Law of July 27th, 1922).

The guardian's authority continues so long as the child is entitled to claim maintenance—i.e., up to seventeen years of age, or even later if the child is still unable at that time to earn his living, or if his

school or vocational education entails further payment of maintenance. . . .

In Finnish law, the powers of the official guardian are much wider than those of a curator. In actual fact, they closely resemble the powers of a guardian and exceed the rights of the mother, even where the latter exercises guardianship over her child. . . . If the guardian considers that a mother is not taking sufficient care of her child, he may be empowered by the Child Welfare Committee or the guardianship court to remove the child from his mother and put him elsewhere, even where the mother is not sufficiently incompetent to justify withdrawal of the right of guardianship. The guardian also recovers the maintenance payable by the father, and by the mother if the child is separated from the latter, and administers the periodical allowance for maintenance if a lump sum has been paid. If the child's welfare demands it, the guardian may refuse to allow the mother and father, even where the latter has acknowledged paternity, to see the child . . . [p. 10].

Features of the organisation of official guardianship.—In Helsinki, guardianship and the public supervision of illegitimate children are strictly centralised. The official guardian is the curator, or even the guardian in the strict sense of the term, of all illegitimate children residing in the city. Although there are as many as 3,200 such children in a population of about 250,000, the right of decision in all questions affecting their welfare is vested in a single individual, wherever such right is not held by the mother, the court, the Child Welfare Committee or the guardianship court [p. 11].

SWEDEN¹

Article 13 of the Law of June 14th, 1927, stipulates that:

As provided hereinafter, a *gardien* shall be appointed for each child born out of wedlock to advise and assist the mother and thus safeguard the child's rights and interests. It shall be the *gardien's* special duty to see that steps are taken without delay to establish the child's paternity and to ensure his maintenance, to lend assistance in regard to the recovery and custody of the maintenance allowance and, if necessary, to apply for the appointment of a guardian for the child.

¹ Information furnished by M. G. H. von Koch, councillor of chancellory, inspector-general at the Ministry of Social Welfare, Stockholm.

Organisation.—*Gardiens* are appointed by Child Welfare Committees, which are communal bodies consisting of persons who, by virtue of their duties or for other reasons, take a special interest in the protection of children. . . .

The child's *gardien* does not in any way relieve the mother of her natural duties or take her place as the child's representative. He must, as far as possible, co-operate with the mother, who, in the eyes of the law, is the child's guardian. Cases may, however, occur in which the interests of the child may require the *gardien* to take his side, even against the mother. If the latter cannot look after the child, she may be deprived of her guardianship. The father, if qualified, is then usually appointed guardian, but he has no absolute title to the position. The Court may transfer legal authority over the child to the particular person whom it considers best fitted to look after the child's welfare.

As it is desirable that the *gardien* should be appointed before the child's birth, the law contains the following provision (Article 14):

A woman who is about to become a mother of an illegitimate child must, three months before confinement is expected, notify a member of the Child Welfare Committee in the commune where she resides, or some other person appointed by the committee to receive such notifications. The latter must forthwith inform the committee. If the woman is registered in another commune, the committee must immediately notify the Child Welfare Committee of the latter commune.

Term of office of the gardien.—The Law provides that a *gardien* shall assume office even before the birth of a child and retain his office until the child is eighteen years old; these duties may, however, terminate at an earlier age if they prove to be unnecessary because the child has been legitimated by the marriage of his parents, or because he has been adopted, or because at the age of fifteen, he can earn his own living. The Child Welfare Committee may relieve a *gardien* of his functions and appoint another . . . [p. 12].

Duties and powers of the gardien.—The *gardien*'s first duty is to take the necessary steps to discover the father of the child. This is extremely important, as the child is entitled to know his father's name. If there is reason to believe that the child was born after the

parents were betrothed—in other words, was conceived during the period of betrothal—or if the parents became engaged after conception, the *gardien* must collect all possible information on this subject. As soon as the fact of birth is established, immediate steps must be taken to ensure the child's maintenance, as any delay might enable the father to enter into new relations or marry a woman other than the mother, which would make him less willing to acknowledge his duty towards the child. Paternity is also more easily established immediately—it should even be done before the child is born. The *gardien* must also definitely ascertain the mother's name, in case there is any doubt as to the one she has given. The mother is no longer entitled as previously to remain unknown.

Another duty of the *gardien* is to approve the agreement between the parents regarding the amount of maintenance; in determining this matter, the circumstances of the two parents have to be taken into consideration. A wealthy father, for instance, may have to pay large contributions. Responsibility for maintenance ceases when the child reaches the age of sixteen, unless his special gifts or circumstances justify further education, in which case he may have to be maintained up to eighteen years of age. The agreement may also provide for the payment of a lump sum. The amount must then be approved by and paid to the Child Welfare Committee, which determines how it shall be invested.

Independently of the mother, the *gardien* may take proceedings on the child's behalf regarding paternity, maintenance and guardianship, or to secure a declaration that the child was born after betrothal . . . [pp. 12-13].

SWITZERLAND¹

The principle of the official guardianship of illegitimate children was laid down in the Civil Code, which came into force in 1912. Article 311 reads:

In all cases, as soon as the guardianship authority has had notice of the birth of an illegitimate child, or an unmarried mother has notified it of her pregnancy, the authority must appoint a curator to watch over the child's interests.

¹ Taken from a very full report on all the phases of official and professional guardianship in Switzerland supplied to the secretariat by Dr. Alfred Silbernagel, honorary president of the Basle Civil Court.

At the conclusion of the legal proceedings, or on the expiration of the period of limitation, the curator is replaced by a guardian, unless the authority responsible for guardianship deems it advisable to place the child under the paternal power of his mother or father. . . .

Official guardianship is mainly required for the protection of illegitimate children. Before the entry into force of the Civil Code, the cantons of French-speaking Switzerland were under the influence of the French Code, which prohibits proceedings to establish paternity. In German-speaking Switzerland, prior to 1912, under the old cantonal law, it was usually the mother who had the sole right to claim maintenance for herself and her child. In a great many cases, however, the father tried to take advantage of the inexperience and simplicity of the mother and to allow the presumptive period to expire without previously settling the question of maintenance, thus depriving her permanently of her claim. In other cases, the arrangements made by the father with the mother for the child's maintenance were ridiculously inadequate and were often legally indispensable. These circumstances convinced the legislative authorities of the necessity of depriving the mother of the sole right to decide the child's material future.

These circumstances induced the Federal legislative authorities, in compiling the new Swiss Penal Code, to give the child as well as the mother the right to claim maintenance . . . [pp. 13-14].

General principles underlying the organisation of guardianship authorities.—In the larger towns, there has been an increasing realisation of the absolute necessity of concentrating child welfare work in cantonal or municipal departments and of appointing permanent paid officials, attached to or controlled by these departments, to act as official or professional guardians, and of giving them special training in the juridical and other problems concerning legal assistance to children, particularly illegitimate and necessitous children, and children boarded away from home or in moral danger. Where the organisation is satisfactory, as it usually is in the larger towns, guardianship work presents no difficulties, and its necessity is not contested by any person or political party. . . . [p. 14].

17. Position of the Illegitimate Child under Social Insurance Laws

REPORT SUBMITTED BY THE INTERNATIONAL LABOUR OFFICE TO THE
CHILD WELFARE COMMITTEE OF THE LEAGUE OF NATIONS
APRIL, 1931, LEAGUE OF NATIONS, C. P. E., 283

INTRODUCTION

The documentation we have collected relates to about thirty countries. In some of these countries certain branches of insurance have not been developed. In others the legislative provisions do not determine clearly and precisely the position of the illegitimate child. We have, however, been able to derive from our documentation several main principles in accordance with which we shall endeavour to classify the countries whose social legislation in regard to the position of the illegitimate child is more or less similar.

1. In Italy the illegitimate child has the same right as the legitimate child to benefits in respect of insurance against *accidents, invalidity, and old age* and in respect of *maternity and tuberculosis* insurance. In Finland, Lithuania, Norway and Sweden the illegitimate child is placed on the same footing, either expressly or tacitly, as the legitimate child in the legislation on *accident* insurance. This also applies to *maternity* insurance in Lithuania, Norway and Sweden, insurance against *invalidity and old age* in Sweden, and *sickness* insurance in Lithuania and Norway. The free sickness insurance funds in Finland and Sweden pay no *sickness* benefits to the children of insured persons.

In these five countries no distinction is made between legitimate and illegitimate children in such insurance legislation as exists. This is also the case in Denmark, with the slight exception that no maintenance allowance is paid to illegitimate children in respect of accident insurance. It should also be noted that the Danish laws on insurance against *invalidity and old age* do not provide for the payment of benefits to the children of beneficiaries irrespective of their civil status. In Yugoslavia the law on workers' insurance does not distinguish between legitimate and illegitimate children; in the case of *sickness* insurance, however, only illegitimate children living in the household of the father and mother are granted the same rights as legitimate children.

2. In the second group we place Estonia and Latvia, in whose legislation on *accident* and *maternity* insurance no distinction is drawn between legitimate and illegitimate children. In the case of *sickness* insurance, the insurances may, if they think fit, treat illegitimate children differently from legitimate children.

3. The third group consists of Austria, Czechoslovakia, Germany, Hungary, Poland and Switzerland. Under the legislation of these countries, the illegitimate child is entitled to the same benefits as the legitimate child in respect of the mother's insurance. The rights of the illegitimate child in respect of the father's insurance are only admitted if paternity has been expressly acknowledged in a prescribed form. In Czechoslovakia, Germany, Hungary and Poland, however, this express acknowledgment of paternity is not required in the case of *sickness* insurance, and in Austria, in the case of *workers' pensions* insurance.

4. In France and Belgium, the law on *accident* insurance does not distinguish, in respect of the right to benefits, between legitimate children and the illegitimate children acknowledged before the accident. Similarly, in Belgium, the right of a child to benefit from insurance against *death* is determined not by filiation, but by the fact of its dependence. This also applies to insurance against *death* in France so far as the payment of a lump sum is concerned. Temporary orphans' pensions, on the other hand, are only payable to legitimate or acknowledged children. Under the new French law on sickness, maternity, invalidity and old age insurance, no distinction is drawn in respect of the right to benefits between illegitimate children and children born in wedlock, whatever their civil status.

5. In Great Britain, Australia and New Zealand, no distinction is drawn in respect of *accident* insurance between legitimate and illegitimate children. This also applies to Canada with one slight exception in the province of Quebec. In South Africa, the magistrate may discriminate against the illegitimate child. Certain exceptions are made in Great Britain and Canada in respect of *maternity* insurance to the disadvantage of the illegitimate child. This also applies to *widows'* insurance in Australia and New Zealand. No distinction is drawn in Great Britain between legitimate and illegitimate children in respect of *sickness* insurance. With regard to *pen-*

sions insurance in Great Britain, the illegitimate child must have been living with the insured person at the time of death in order to qualify for equal treatment.

6. In addition to these five groups, there are certain countries in which the position of the natural child in respect of social insurance is treated in a special manner.

In Spain, the right to *maternity* insurance benefits is not dependent on civil status, whereas in respect of *accident* insurance only acknowledged illegitimate children are entitled to the same rights as legitimate children.

In Japan, illegitimate children are treated in the same way as legitimate children in all branches of social insurance, except *accident* insurance.

In the Netherlands legislation on insurance against *accidents, invalidity and old age*, acknowledged natural children are treated on the same footing as legitimate children, but not unacknowledged natural children. Under the law on *maternity* insurance, benefits are paid only to married women. Compulsory *sickness* insurance does not cover benefits to the children of insured persons.

In India, natural children are not entitled to *accident* insurance benefits.

In the laws of the Union of Soviet Socialist Republics the idea of illegitimacy does not exist; consequently, no distinction is drawn between the children of a registered marriage and those born of a marriage which has not been registered [pp. 1-2].

PART IV

ORGANIZING FOR ADMINISTRATION OF CHILD
WELFARE SERVICES



INTRODUCTION

In the foregoing sections attention has been called to the work of governmental agencies charged with responsibility for administering child welfare programs, and in the documents extracts from the reports of some of these agencies have been given. Some consideration of the general organization and administration of the public social services for children in relation to the whole welfare program is necessary in order to bring into proper focus the administrative problems to which attention has been called.

As we have seen, the state has recognized certain obligations to all its children. For example, it has expended large sums for free schools and playgrounds to aid parents in their common-law duty to educate their children. This has been done in part because collective provision is the best way to meet a universal need. But in its public-school program the state also recognized it had a responsibility for the training and protection of children, which could be met only by providing the necessary facilities for such training and insuring the use of these facilities by prohibiting the employment of children and requiring their attendance at schools. In recent years the state has likewise accepted responsibility for safeguarding the health of children—not merely to prevent sickness and death but to insure optimum physical development of the population. For those children who are wholly dependent upon the state, who are especially handicapped by reason of birth or physical or mental defect, who are becoming delinquent or are delinquent, the state has a special responsibility. The substantive provisions of a law, the administrative organization, the personnel, and the appropriation provided to carry out the responsibility the state assumes for a group of children will determine how well their needs will be met.

Speaking of education, John Dewey said, "What the best and wisest parent wants for his own child, that must the community want for all of its children. Any other ideal for our schools is narrow and unlovely; acted upon, it destroys our democracy."¹ This is

¹ John Dewey, *The School and Society* (University of Chicago Press, 1899), p. 3.

equally true with regard to our health services and especially as to the provision the state makes for the children for whom it assumes complete responsibility.

In its provision for the children in need of special care the state has, however, not acted on Mr. Dewey's theory. Generally speaking, it has undertaken to provide for their care only when the evidence of need made such action inevitable. Reluctant to undertake a clear duty, it is not surprising that legislatures have sought to provide not "what the best and wisest parent wants for his own child" but the cheapest possible care, and that law-makers have been slow to recognize that this not only violated sound humanitarian tenets but was in the long run very costly economy. Likewise, when a state gives to a department new duties and administrative responsibilities, for example, the licensing and supervision of private agencies, the same false economy has often meant that inadequate funds were provided for the tasks the law imposed. When the funds are inadequate, officials often become discouraged and give up the struggle for adequate standards, with the result that the administrative performance is then not as good as the available funds make possible.

While provision for dependent and delinquent children was at first the responsibility of the local poor officials, three levels of government—federal, state, and local—now participate in the program.

The creation of the United States Children's Bureau in 1912 was the first recognition that the national government had a responsibility to promote the welfare of the children of the nation. An expression of the growing interest in child conservation, the creation of the Bureau may be said to have ushered in a new era in the child welfare movement. The plan for the Bureau followed no traditional organization of state or local government or private child welfare agency. It was to serve and evaluate agencies concerned with any aspect of child health, child labor and child welfare. It was originally wholly a research organization and information center as were the scientific bureaus in the departments of Agriculture, the Interior, and Commerce and Labor. While scientific research in animal husbandry, foods, minerals, or fish was accepted without question as a function of the government, the proposal to study the

physical, mental, and social problems of childhood was opposed as socialistic. Opposition, which delayed the enactment of the law creating the Bureau for three years after it was recommended in a special message by President Roosevelt,¹ was in part due, however, to the fact that the National Child Labor Committee urged its creation, and the issue of child labor was then highly controversial.

The Act of 1912 (p. 621) gave to the Children's Bureau a very broad grant of power. The whole child was made the subject of its research. The interrelated problems of child health, dependency, delinquency, and child labor were to be considered and interpreted in relation to the community program for all children. Specialists in all these fields were to work together on studies of the individual child and in the evaluation of services for children. The use of experts in several fields—medicine and law as well as social work and administration—would it was hoped give a more scientific appraisal than was possible when only one aspect of child life was considered. Julia C. Lathrop, the first chief of the Children's Bureau, had had long years of experience in public welfare as well as private social agencies.² She recognized the inevitable limitations of the latter and was convinced that the state had only just begun to accept the responsibility it must finally assume for insuring minimum standards of care for all children. A democracy in her opinion must seek continually new ways of insuring the optimum growth and development of all American children.

Miss Lathrop thought a social program must be built on a factual basis, and she was prepared to follow wherever investigations, carefully planned and meticulously executed, led her. The Children's Bureau began its work with a budget of approximately \$25,000, but in spite of this limitation Miss Lathrop made plans for research by the Bureau so that it would meet progressively the objects for which it was created and would be able to justify on a scientific basis any recommendations made. While prevention of dependency and delinquency was a goal toward which the Bureau investigations were

¹ For an account of the history of the creation of the Bureau, see Alice Elizabeth Padgett, "The History of the Establishment of the United States Children's Bureau" (unpublished Master's thesis, University of Chicago, 1936).

² Jane Addams, *My Friend, Julia Lathrop* (New York: Macmillan, 1935).

directed, the need of scientific treatment of those who were or would, in the future, become dependent or delinquent was recognized in the original plans made for the studies to be undertaken.

That under Miss Lathrop the Bureau gave the kind of national leadership which led to an increase in its budget and functions and promoted the welfare of children everywhere is not surprising. In later years when the Bureau was given the administration of grants-in-aid to the states, more direct participation in the development of the public child health and welfare programs became possible, and, as its appropriations increased, some research by demonstration or experiments in new types of care also have been possible.

State departments of social welfare developed in the latter half of the nineteenth century around an institutional program and until recently little effort was made in most states to have the state government assume additional responsibility or participate in any other type of care. The first forward step in improved organization for administration of the child welfare services was the establishment in the more progressive states of a children's bureau or division in the state department of public welfare.¹ To these bureaus or divisions was given the responsibility for the administration of the laws relating to the inspection and licensing of boarding-homes, agencies, and institutions and the direct-care program for dependent children, if the state had one. Administration of the state institutions for delinquent children, clearly a function of the children's bureau or division, has too often been given to the bureau of prisons. Supervision of local public agencies for the care of children was usually made a responsibility of the state agency, but until recently authority to enforce minimum standards was lacking.

The importance of financial participation by the state government in the discharge of the responsibilities which had historically been given to local governments was little recognized until after 1920. During the period when the local governments bore all the costs of the program, progressive improvement was made in the

¹ In a few states in which there was no department of public welfare or only a very limited institutional program, a separate children's commission was established. Alabama prior to 1935 (p. 625) and Oregon supply the best examples of this method of organization. New Mexico also formerly had a Department of Public Welfare with only a Bureau of Public Health and a Bureau of Child Welfare.

standard of care provided in most of the largest metropolitan communities where social work leadership was available and the needs of the children were dramatized by the very numbers involved, but children in the smaller cities and rural communities were greatly neglected under this system of complete local responsibility.

While there was a movement for co-ordination of the county and state welfare agencies in the latter part of the nineteenth century, it was projected on the basis of a very different program from the present one. In Indiana, under a law first enacted in 1891,¹ nearly all the counties appointed unpaid county boards of children's guardians which were under the control of the county commissioners but had the responsibility of co-operating with the State Board of Charities in the care of dependent children. Unfortunately, reorganization in accordance with present-day thinking was delayed in Indiana because of the loyalties that had been developed to a plan that had been a forward step a generation earlier but had become an inadequate organization for administering the social services of today.

The United States Children's Bureau, by directing national attention to the defects in the old systems of administration and new types of organization that promised to improve greatly the services for children, played its part in the development of public appreciation of the importance of effective organization for the administration of the services for children. The state children's code committees or commissions also did much to promote better co-ordination and administration of children's services. Ohio appointed the first such commission in 1911, and from that time the legislatures or governors of state after state have given a selected group of citizens the responsibility of examining the state laws relating to children with a view to suggesting amendments and additions.² It was inevitable that these commissions should discover that state and local administrative machinery was ill suited to provide the needed services.

As in the organization of public health services, so in the provision of child welfare services, it was clear that a larger unit for local administration than the town was necessary, and a county system or

¹ *Laws of Indiana, 1891*, chap. 151, p. 365.

² *State Commissions for the Study and Revision of Child-Welfare Laws* (U.S. Children's Bureau Publication No. 131; Washington, D.C., 1924).

a combination of two or more counties was urged. This twentieth-century movement for county organization of health and welfare services first made progress in the southern, middle western, and far western states, in part because of the fact that historically the county was the important unit of local government in those sections.

Among the states, Minnesota and North Carolina led in 1917 in a new attack on the problem of administration, the former by definitely adopting the principle of a state-county system in the administration of its child welfare services, and the latter by providing a similar system for its general public welfare services, including those for children. Other states followed the example of these two states in passing county-organization laws,¹ but, except in Alabama, progress in county organization was much slower than in Minnesota or North Carolina. The United States Children's Bureau adopted the policy of making currently available the facts as to the progress being made in these and other states.²

While a children's program is a part of a general social service program, it is not surprising that in a number of states modern organization of the services for children antedated the reorganization of the other services. This was because a new and widespread interest in child welfare had been developed and because public sympathy for children was more easily aroused. In contrast, the long-established agencies for poor relief had been in most places uninfluenced by the great changes in social work standards, and in the East social workers, believing that reform of public relief agencies was hopeless, had sought to abolish them.

Prior to 1935 the general problem was how to induce the county

¹ Ohio passed a law providing for county organization in 1919, Arizona and Missouri in 1921, and Virginia in 1922.

² In 1922 the Children's Bureau published a report which reviewed the work being done in certain counties in Minnesota, California, New Jersey, and New York under very different laws and organization (*County Organization for Child Care and Protection* [Bureau Publication No. 107]) and in 1926 a summary of the organization setup and work of the counties in relation to the state departments in the states which had attempted such a program (*The County as a Unit for an Organized Program of Child Caring and Protective Work*, by Emma O. Lundberg [Bureau Publication No. 169]). Less than a decade later another report made by the Bureau summarized the progress made before the adoption of the Social Security Act (*The County as an Administrative Unit for Social Work*, by Mary Ruth Colby [Bureau Publication No. 224; 1933]).

boards to provide a county public welfare or child welfare department even when the law providing for its creation was mandatory. As the system of state grants-in-aid to local governments for the financing of the social service program had been developed in only a few states, the state departments had usually no financial inducement to offer the county boards. They had an argument which should have won their support—the improvement of the services for children which would follow better organization. But the boards regarded themselves as the watchdogs of the county treasury, and these theoretical advantages to children were unconvincing.

During the predepression period Alabama led the states in developing correlated state and county child welfare services. Alabama's success was due to the skilful work of the state director and her assistants but also to the fact that a grant-in-aid by the state for the administration of the truancy law was made available to the Child Welfare Commission. This grant, available on the condition that it was matched by the county, enabled the state Child Welfare Commission to persuade the counties to provide at least one full-time trained worker for a general child welfare program in sixty-five out of the sixty-seven counties of the state. Minnesota succeeded in getting a large number of county child welfare boards created, but with only a few exceptions no paid staff was provided.¹ North Carolina, although the Act was mandatory on the counties, made little progress until in 1931² the state adopted the Alabama plan of a state grant-in-aid for the enforcement of the truancy law, available only if the county set up a county welfare department. In New York, where the State Charities Aid co-operated with the Department of Social Welfare in developing county programs, much progress was made in the local organization of care for dependent children, and other states, notably California, were also making progress in developing local county-wide services.

When the epidemic of unemployment spread throughout the country, when federal funds became available in 1932 and the states made their first appropriations for relief, emergency state relief

¹ In 1932 out of eighty-seven counties only twelve were employing one or more case workers.

² *North Carolina Laws of 1931*, chap. 430, sec. 6, p. 732.

organizations were set up in one state after another for the relief of the unemployed. While these organizations belonged in the state departments of public welfare and leaders in this field urged that they be placed there, it was probably wise that, in the existing emergency, independent organizations were created. As a result the regular work of the state departments did not have to bear the criticism to which these emergency organizations were subjected. The progress in state-wide organization for relief through the grants from the Federal Emergency Relief Administration and the financial participation of the state governments in the emergency relief programs demonstrated the need of a permanent federal and state program for the relief of the unemployed and the unemployable and the incorporation of what had been begun as an emergency program in the state and county welfare departments.

The passage of the Social Security Act providing for federal grants-in-aid for the aged, the blind, dependent children, and child welfare services required sweeping changes in state and county relationships. The Security Act required that to be eligible for the assistance grants the state must participate financially in the programs and a state agency must be given responsibility to require their effective administration throughout the state.¹ As a result, there has been in progress since 1935 a thoroughgoing reorganization of the public social services.² New, experimental state-county relationships have been developed, and, with the federal government pressing for progressive improvement in administration, we have entered a new era in our public social services.

The danger is always that the children's program, although of basic importance, may be overlooked or ignored as the pressure of numbers receiving general relief or old-age assistance and of the public interested in the aged and unemployed may absorb the attention of federal, state, and county directors to the exclusion of other important and necessary programs.

¹ Social Security Act, 49 U.S. Statutes 620 (1935), Title I, "Grants to States for Old-Age Assistance"; Title IV, "Grants to States for Aid to Dependent Children"; Title V, "Grants to States for Maternal and Child Welfare"; Title X, "Grants to States for Aid to the Blind."

² Marietta Stevenson, "Public Welfare Reorganization," *Social Service Review*, XI (September, 1937), 349-59.

Except for the fact that the Social Security Act provided for the federal grants-in-aid for child welfare services (p. 646) and thus made possible increases in the professional staff of the child welfare divisions or bureaus in the state departments as well as more assistance for county programs, the children's services, although better developed than the general public welfare services before the depression, might not have shared in the general advance of the last few years.

Children, it should be repeated, are not pocket editions of adults. Because childhood is a period of physical and mental growth and development, a period of preparation for adult responsibility in public and private life, a program for children cannot be merely an adaptation of the program for adults, nor should it be curtailed during the periods of depression or emergency expansion of other programs. Whether children remain in their own homes cared for and supported by their parents or maintained by a public agency, special provision for their needs must be made. All children are dependent, but only a relatively small number are dependent on the state. Most of them are in some degree problem children, but only a few have such serious difficulties in adjusting to their environment that the state feels obliged to assume responsibility for their care.

The line between dependency, neglect, and delinquency is less easy to draw as the causes of delinquency are better understood. That the social services provided for dependent, neglected, and delinquent children and for those born out of wedlock should be in a separate division of the state and county public welfare departments is clear. In rural counties where it may be possible to employ only a single child welfare specialist much assistance will have to be given by the experts in the child welfare division of the state department.

While organization for administration is important, success or failure of the program will be determined by the personnel employed. Fortunately, the last few years have seen a growing appreciation of the value of the trained social worker in the public social services. The adoption of a special merit system for the public welfare services or of a general civil service law in an increasing number of states should, if the new systems are well administered and supported by

the general public, result in great improvements in administrative practices. The civil service principle, selection of the best available person by an open competitive examination, is not self-executing. To accomplish this purpose the civil service organization must function efficiently in the detailed administrative work which is necessary. The classification of personnel, the recruitment of candidates, the setting of examinations, the method of certification of those who qualify, the length of the probation period, the promotion policy, the elimination of employees whose work falls below an acceptable standard are some of the detailed problems the solution of which will determine the effectiveness of the civil service system. But of fundamental importance is the decision as to what type of training and experience is to be considered in determining who is the best available candidate. If proper standards are not adopted, open competition will keep out the political appointee but will not insure good care for the children. In the field of child welfare the selection of the best available person by competition among those who have the basic qualification of training in social service and experience in the child welfare field is necessary to bring the public services up to the level of the best private agencies. The county and state residence requirements in many civil service laws and the almost universal veteran's preference tend to defeat the merit principle in selection of personnel.

Progress is being made, but it is discouragingly slow when one considers the wrongs that are being committed in the name of child welfare by untrained administrators whether appointed under a civil service or a spoils system.

GRACE ABBOTT

1. The Act Creating the Children's Bureau

37 UNITED STATES STATUTES 79 (1912)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be established in the Department of Commerce and Labor¹ a bureau to be known as the Childrens' Bureau.

SECTION 2. That the said bureau shall be under the direction of a chief, to be appointed by the President, by and with the advice and consent of the Senate, and who shall receive an annual compensation of five thousand dollars. The said bureau shall investigate and report to said department upon all matters pertaining to the welfare of children and child life among all classes of our people, and shall especially investigate the questions of infant mortality, the birth rate, orphanage, juvenile courts, desertion, dangerous occupations, accidents and diseases of children, employment, legislation affecting children in the several States and Territories. But no official, or agent, or representative of said bureau shall, over the objection of the head of the family, enter any house used exclusively as a family residence. The chief of said bureau may from time to time publish the results of these investigations in such manner and to such extent as may be prescribed by the Secretary of Commerce and Labor.

SEC. 3. That there shall be in said bureau, until otherwise provided for by law, an assistant chief, to be appointed by the Secretary of Commerce and Labor, who shall receive an annual compensation of two thousand four hundred dollars; one private secretary to the chief of the bureau, who shall receive an annual compensation of one thousand five hundred dollars; one statistical expert, at two thousand dollars; two clerks of class four; two clerks of class three; one clerk of class two; one clerk of class one; one clerk, at one thousand dollars; one copyist, at nine hundred dollars; one special agent, at one thousand four hundred dollars; one special agent, at one

¹ [When the Department of Labor was created by act of Congress on March 4, 1913, the Children's Bureau was placed in the new department.—EDITOR.]

thousand two hundred dollars, and one messenger at eight hundred and forty dollars.

SEC. 4. That the Secretary of Commerce and Labor is hereby directed to furnish sufficient quarters for the work of this bureau at an annual rental not to exceed two thousand dollars.

SEC. 5. That this Act shall take effect and be in force from and after its passage.

2. Minnesota Provides for a Children's Bureau under the Board of Control and for County Child Welfare Boards

A. THE ACT OF 1917

SESSION LAWS OF MINNESOTA, 1917, CHAP. 194

SECTION 1. *Board of control may have legal guardianship of children.*—The State board of control shall have powers of legal guardianship over the persons of all children who may be committed by courts of competent jurisdiction to the care of the board, or to institutions under its management. After commitment to its guardianship the board may make such provision for and disposition of the child as necessity and the best interests of the child may from time to time require; provided, however, that no child shall be placed in an institution maintained for the care of delinquents who has not been duly adjudged to be delinquent; and provided further that the board shall not be authorized to consent to the adoption of a child who is committed to its guardianship on account of delinquency.

SEC. 2. *Illegitimate children.*—It shall be the duty of the board of control when notified of a woman who is delivered of an illegitimate child, or pregnant with child likely to be illegitimate when born, to take care that the interests of the child are safeguarded, that appropriate steps are taken to establish his paternity, and that there is secured for him the nearest possible approximation to the care, support and education that he would be entitled to if born of lawful marriage. For the better accomplishment of these purposes the board may initiate such legal or other action as is deemed necessary; may make such provision for the care, maintenance and education of the child as the best interests of the child may from time to

time require, and may offer its aid and protection in such ways as are found wise and expedient to the unmarried woman approaching motherhood.

SEC. 3. *Duties in behalf of children.—Executive officers.*—It shall be the duty of the board to promote the enforcement of all laws for the protection of defective, illegitimate, dependent, neglected and delinquent children, to co-operate to this end with juvenile courts and all reputable child-helping and child-placing agencies of a public or private character, and to take the initiative in all matters involving the interests of such children where adequate provision therefor has not already been made. The board shall have authority to appoint and fix the salaries of a chief executive officer and such assistants as shall be deemed necessary to carry out the purposes of this act.

SEC. 4. *County child welfare boards.—Appointment of agents.*—The state board of control may when requested so to do by the county board appoint in each county three persons resident therein, at least two of whom shall be women, who shall serve without compensation and hold office during the pleasure of the board, and who, together with a member to be designated by the county board from their own number and the county superintendent of schools, shall constitute a child welfare board for the county, which shall select its own chairman; provided that in any county containing a city of the first class five members shall be appointed by the state board of control. The child welfare board shall perform such duties as may be required of it by the said board of control in furtherance of the purposes of this act; and may appoint a secretary and all necessary assistants, who shall receive from the county such salaries as may be fixed by the child welfare board with the approval of the county board. Persons thus appointed shall be the executive agents of the child welfare board.

SEC. 5. *Agents where no child welfare board.*—In counties where no child welfare board exists the judge of the juvenile court may appoint a local agent to co-operate with the state board of control in furtherance of the purpose of this act, who shall receive from the county such salary as may be fixed by the judge with the approval of the county board.

SEC. 6. *Additional duties of agents.*—Agents appointed pursuant to sections 4 and 5 may also, when so directed by the county board, perform the duties of probation and school attendance officers, and may aid in the investigation and supervision of county allowances to mothers.

SEC. 7. *Expenses of members and agents.*—The traveling and other necessary expense of the several members of the child welfare board, while acting officially as members of such board, and of the executive agents while exclusively employed in the business of the board, shall be paid, so far as approved by the county board, out of the general revenue fund of the county in the same manner as other claims against the county.

SEC. 8. This act shall take effect and be in force from and after the 1st day of January, 1918.

B. PROVISION FOR COUNTY CHILD WELFARE BOARDS IN MINNESOTA IN 1923

MINNESOTA GENERAL STATUTES, 1923, CHAP. 25

SEC. 4457. *County child welfare boards.*—*Appointment of agents.*—The State board of control may when requested so to do by the county board appoint in each county three persons resident therein, at least two of whom shall be women, who shall serve without compensation and hold office during the pleasure of the board, and who, together with a member to be designated by the county board from their own number and the county superintendent of schools, shall constitute a child welfare board for the county, which shall select its own chairman; provided, that in any county containing a city of the first class five members shall be appointed by the State board of control. The child welfare board shall perform such duties as may be required of it by the said board of control in furtherance of the purposes of this act; and may appoint a secretary and all necessary assistants, who shall receive from the county such salaries as may be fixed by the child welfare board with the approval of the county board. Persons thus appointed shall be the executive agents of the child welfare board.

SEC. 4458. *Agents where no child welfare board.*—In counties where no child welfare board exists the judge of the juvenile court may

appoint a local agent to cooperate with the State board of control in furtherance of the purpose of this act, who shall receive from the county such salary as may be fixed by the judge with the approval of the county board.

SEC. 4459. *Additional duties of agents.*—Agents appointed pursuant to sections 4 and 5 may also, when so directed by the county board, perform the duties of probation and school attendance officers, and may aid in the investigation and supervision of county allowances to mothers.

SEC. 4460. *Expenses of members and agents.*—The traveling and other necessary expense of the several members of the child welfare board, while acting officially as members of such board, and of the executive agents while exclusively employed in the business of the board, shall be paid, so far as approved by the county board, out of the general revenue fund of the county in the same manner as other claims against the county.

SEC. 4461. *State board of control to cooperate with child welfare board.*—The State board of control and the several county child welfare boards within their respective jurisdictions, upon request of county boards, city, village, or borough councils, town boards, or other public boards or authorities charged by law with the administration of the laws relating to the relief of the poor, may cooperate with such boards and authorities in the administration of such laws.

3. The Alabama Program

A. A CHILD WELFARE DEPARTMENT ESTABLISHED IN ALABAMA IN 1919¹

GENERAL LAWS OF ALABAMA, 1919, No. 457, P. 694

Be it enacted by the State of Alabama:

SECTION 1. That there is hereby established for the State of Alabama a Child Welfare Department, to be located in the State Capitol, with the several powers, functions, and duties hereinafter prescribed.

¹ [Under the Act of 1935 the duties and powers of this Board were given to the State Department of Public Welfare, most of which are now administered by a Children's Division of the Department (*General Laws of Alabama, 1935, No. 332, p. 762*).—EDITOR.]

SEC. 2. That the said department shall have the power and it shall be its duty (1) To devise the plans and means for and have general oversight over the welfare work for minor children in the State. (2) To advise with the judges and probation officers of the Juvenile Courts of the several counties of the State and to encourage and perfect the work of such courts throughout the State. (3) To exercise the right of visitation, inspection and co-operative supervision of all State, county, municipal and other institutions, public or private, receiving or caring for children, and of all orphanages, child placing societies, and of all maternity hospitals and lying-in homes. Provided, however, that nothing contained in this section shall be so construed as to supersede or interfere with the powers and duties of the Board of Control and Economy heretofore created and established. (4) To exercise general supervision over the administration and enforcement of existing laws governing apprenticeships, adoptions, and child placing agencies. (5) To issue permits to orphanages and all other institutions caring for, receiving, placing or handling minor children, to all maternity hospitals and lying-in homes, and to revoke any such permit for cause. (6) To require reports from courts and institutions, public and private, to the extent and in the form and manner hereinafter provided. (7) To enforce all laws, regulating the employment of minor children, with full power of visitation and inspection of all factories, industries, and other establishments in which children may be employed, permitted or suffered to work, the duties, power and authority, with reference to the Child Labor Law, heretofore or hereafter imposed upon the State Prison Inspector, being hereby transferred to and imposed upon the Child Welfare Department herein created. (8) To make surveys and to hold conferences and conventions for the purpose of carrying out the provisions of this Act and of promoting the welfare of minor children, and to that end to enlist the co-operation of any State, county or municipal officials. (9) To solicit and receive donations of money and other things of value to be used in the support and development of its work and activities. (10) To co-operate with the State Department of Education, the State Board of Health, all State, county, and municipal, benevolent and religious, educational and correctional institutions, and to solicit the aid and to co-ordinate

the activities of all private and volunteer social, labor, and welfare organizations on all subjects affecting the health, education, morals and general welfare of minor children. (11) To establish and maintain homes, receiving stations, or other agencies, for the care of dependent, neglected or delinquent minor children, or to contract with such institutions for their care, and to receive minor children committed to its care and to place such children either in family homes, or in institutions caring for children, and to supervise such children however placed.

SEC. 3. (1) That the Child Welfare Department shall be under the control of a Commission consisting of the Governor, the State Superintendent of Education, the State Health Officer, ex-officio, and six persons to be appointed by the Governor whose terms of office beginning from the date of their appointment shall be respectively, two for two years, two for four years, and two for six years, the said terms of office to be designated to each appointee by the Governor in making the appointment. All succeeding appointees shall be appointed by the Governor and shall hold office for a term of six years and until their successors are appointed and qualified. (2) The said Commission shall, within sixty days after the approval of this Act, and at the call of the Governor, meet at the State Capitol and proceed to organize the said department. It shall hold at the State Capitol at least one regular meeting during each year, and as many special meetings as may be necessary. At such meetings five members shall constitute a quorum. The Governor shall be the presiding officer, but in case of his absence, the Commission shall have authority to elect a temporary presiding officer. If there be no director as hereinafter provided for, the Commission may elect a secretary, pro-tempore.* (3) The director hereinafter provided for shall be the secretary of the Commission. (4) The members of the Commission shall receive no compensation for their services other than the amount of their traveling and other expenses, actually paid out while in attendance on the meetings of the Commission, or on the business of the department. (5) The Commission is empowered to adopt rules for its own government, and for the government of the department; to elect a director and to provide for the selection or appointment of other officials or employees as may be necessary

and to fix their compensation; to have general control of the performance of every duty and the execution of the several powers herein conferred upon the department; to control and direct the expenditure of all appropriations which may be made for the maintenance of the department; and to do and perform such other acts and things as may be necessary to carry out the true intent and purposes of this Act.

SEC. 4. (1) That the department shall be under the immediate management and control of a director to be elected by the Commission whose term of office shall be six years and until his successor is elected and qualified. The Commission shall have authority to discharge at any time the director at its pleasure. (2) The director shall take oath of office, as other public officials, shall be commissioned in like manner, shall devote his entire time to the work of the department, and shall receive for his services the sum of Three Thousand Dollars per annum, payable monthly as other State officials are paid. (3) The director shall have full control and direction of the work and operations of the department, and he shall use his best endeavors to develop and carry forward the various activities herein provided.

SEC. 5. That it is hereby made the duty of the probate and juvenile court judges to make on or before the tenth day of each month a report to the Child Welfare Department on the work of juvenile courts administered by them, and all apprenticeships and adoptions, in their several counties.

SEC. 6. That it is hereby made the duty of all public and private reformatories, correctional and child-caring institutions, all orphanages, maternity hospitals, lying-in homes, or other institutions having or exercising any jurisdiction or control of, or over dependent, neglected, or delinquent children, to make such reports to the department, and at such times, as may be required by its rules, including the extent and source of income, cost of maintenance, number of inmates, and upon all such other subjects as may be demanded. All reports provided for in this and the preceding section shall be upon blanks and forms provided by the Child Welfare Department. Any such superintendent, manager, or person, in charge of such institutions, failing or refusing to allow such visitation or

inspection, or failing or refusing to make such reports, or furnish the information to said department as herein provided for, shall be guilty of a misdemeanor. It is hereby made the duty of State solicitors, or their assistants, to institute proceedings for the purpose of enforcing this law.

SEC. 7. That in order to render more effective the provisions of this Act, and better to develop its objects in conserving the interests of the minor children of the State, the Commission herein provided for is empowered to devise reasonable minimum standards for the conduct of such orphanages, institutions, or societies, or other agencies receiving or caring for dependent, neglected, or delinquent minor children, and all maternity and lying-in homes, and to grant permits to operate to such of these as conform to the standards. All orphanages, or other institutions or societies or agencies, receiving or caring for dependent, neglected, or delinquent minor children, and all maternity and lying-in homes shall be required to obtain a permit from the department before being permitted to operate, and any such institution carrying on any of the functions of such organizations or any person or persons in charge of such institutions without first obtaining such permit shall be guilty of a misdemeanor. Provided, however, that all such institutions now operating in the State shall be deemed *prima facie* as conforming in all respects to right standards and regulations, and it shall be the duty of the department to issue to every such institution a permit as herein required, but institutions shall be subject to future inspections, and to conformity to the standards, and regulations which may be prescribed by the Department. Power is conferred upon the Department to cancel the permit herein above provided for on the failure of any such organization to comply with the standards which may be established by said Department. No permit shall be granted to any private person, organization, institution or society, to receive, care for, or place any child or children unless such person, organization or society is chartered as provided for by the laws of the State.

SEC. 8. [Provides for the Department to have rooms in the State Capitol and payment of office supplies, postage, and printing from the State printing fund.]

SEC. 9. That for the maintenance of the Department including

the payment of salaries and all expenses not provided for under the special provisions herein provided, the sum of Twelve thousand four hundred (\$12,400) dollars is hereby appropriated, and a continuing annual appropriation of said sum is hereby made.

SEC. 10. That in the event any part or provision of this Act is declared unconstitutional or inoperative by the Courts, it shall only affect such parts or provisions, the remainder of the Act continuing in full force and effect.

SEC. 11. That all laws and parts of laws, general, special, and local in conflict with any of the provisions of this Act be and the same are hereby repealed.

B. COUNTY CHILD WELFARE BOARDS IN 1923

GENERAL LAWS OF ALABAMA, 1923, No. 369, P. 389

SECTION 1. The judge of the Juvenile court of any county having exclusive jurisdiction of dependent, neglected and delinquent children shall, whenever the court of county commissioners or board of revenue of the county shall by resolution declare that a county board of child welfare should be established in said county and shall designate one of its members to serve as a member of such county board of child welfare, and whenever the county board of education shall by resolution declare that a county board of child welfare should be established in said county, appoint three citizens, two of whom shall be women, who together with the judge of the juvenile court, the chairman of the county board of education, the county superintendent of education, and the member designated by the court of county commissioners or board of revenue of the county, shall constitute the county board of child welfare. The term of the member of the county board of child welfare designated by the court of county commissioners or board of revenue of the county shall expire on January 1 of the next ensuing year. His successors shall be appointed by the court of county commissioners or board of revenue of the county, each to serve for a term of two years. The term of the members of the county board of child welfare appointed by the judge of the juvenile court shall be designated to expire as follows: one on January 1, of the next ensuing year; one on January 1, one year after the expiration of the term of the first year; and one on

January 1, two years after the expiration of the term of the first. All their successors shall be appointed by the judge of the juvenile court for terms of two years each. Appointments to fill vacancies shall be made for unexpired terms in the same manner as the member whose vacancy is to be filled was appointed. Members of the county board of child welfare shall serve without compensation for their services as members. Office space and supplies shall be provided for the county board of child welfare and its executive agent or agents and the expense of such provision shall be a valid charge against the county.

SEC. 2. The judge of the juvenile court shall be the chairman of the county board of child welfare. It shall be his duty: (1) to call the first meeting of the board at any place designated by him; (2) to transmit to the State Department of Education and the State Child Welfare Department the names and addresses of every appointed member of the board; (3) to call a meeting of the board not less than once every six months and at such other times as he may deem necessary, and to determine the place of every such meeting; provided, however, that any three members may, by giving ten days' notice in writing to the other members, call a meeting and fix the place thereof; (4) to preside at all meetings of the board; provided that in case the judge is absent the board may select a temporary chairman.

SEC. 3. It shall be the duty of the county board of child welfare: (1) to advise with and to assist the State Child Welfare Department in its work in said county; (2) to make investigations and reports and perform such other duties as may be required by the State Child Welfare Department; (3) to cooperate with all educational and social agencies, public and private, in the county; (4) to cooperate with the county and the city board of education in the enforcement of the compulsory school attendance law, and in all other matters relating to the welfare of children; (5) to cooperate with the county board of health, and county health officers, in matters relating to the welfare of children; (6) to perform all duties hitherto assigned by law to advisory boards of juvenile courts having exclusive jurisdiction over children under sixteen years of age. Upon the establishment of a county board of child welfare in any county,

the advisory board of the juvenile court, if heretofore established, as provided by law, shall be abolished; (7) to make rules and regulations not inconsistent with any of the provisions of this act, or other law, for the conduct of its meetings, the discharge of its duties, the exercise of its powers, and for the direction of the work of the county superintendent of child welfare, and his assistants.

SEC. 4. The county board of child welfare shall have power: (1) to employ an executive agent to be known as the county superintendent of child welfare, who shall serve at the pleasure of the board and whose salary shall be fixed by said board by and with the consent of the county board of education and the court of county commissioners, or board of revenue of the county, one-half of which shall be paid out of public-school funds of the county and one-half out of the public funds of the county; or in such other proportion as may be agreed upon by the boards authorized to make payments by this act; provided that the county board of child welfare, the court of county commissioners or board of revenue of a county, and the county board of education, shall be and are hereby authorized to accept from the governing body of any city, town or municipality in the county, or from any other source, funds to aid in the payment of the salary and expenses of the county superintendent of child welfare and his assistants as herein provided, and the governing body of any city, town or municipality in the county and the board of education of any city, town or municipality in the county shall be and are hereby authorized to make appropriation for the purpose of aiding in the payment of salaries and expenses of the county superintendent of child welfare and his assistants; and provided further that no person shall be employed as county superintendent of child welfare of any county or assistant thereto, unless he shall have been certified as a person having met the requirements for such officer as prescribed in the act establishing the State Child Welfare Department; (2) to employ an assistant or assistants to the county superintendent of child welfare when necessary, and to provide for the compensation of such assistant or assistants in the manner as herein provided in the case of county superintendents of child welfare.

SEC. 5. The county superintendent of child welfare shall have power and it shall be his duty: (1) under the direction of the county

or city board of education or both and the Department of Education, to perform all the duties imposed by law upon the school attendance officer and to enforce the compulsory education law; (2) to cooperate with the State Child Labor Inspector in the enforcement of all laws relating to the employment of children; (3) to serve as county probation officer when appointed by the judge of the probate court; (4) to cooperate with the State Child Welfare Department and all other agencies, public or private, having the care of, or giving relief to children, and to make such investigations into the conditions, life or surroundings of any child in the county as the State Child Welfare Department or the county child welfare board may direct; (5) to act as parole officer under the direction of superintendents of State institutions for any child paroled from such institution and living in said county; (6) to promote and aid in promoting wholesome recreation and other activities for the welfare of children; (7) to cooperate with the county board of health, its agents, officers and nurses, in all matters relating to the establishment and carrying out of public-health program; (8) to report monthly in such form as may be determined by the State Child Welfare Department to the county board of child welfare and to the State Child Welfare Department; provided, that reports of school attendance work shall also be made as directed by the county or city board of education and the State Superintendent of Education; (9) to keep records of all cases handled and business transacted in such manner and form as may be prescribed by the State Child Welfare Department and to make report to the Child Welfare Department in such form and at such time as it may require; (10) assistants of the county superintendents of Child Welfare shall have power and it shall be their duty to exercise any of the powers and discharge any of the duties prescribed for the county superintendent of child welfare.

SEC. 6. In any county in which a special court (other than a juvenile court) having exclusive jurisdiction over dependent, neglected, or delinquent children may have been established, a county board of child welfare may be established in such county in the same manner as provided in this act, the judge of such special court having exclusive jurisdiction over dependent, neglected and delinquent minor children, taking the place of the judge of the juvenile court,

as herein set out. In counties in which there is a city in which a city board or department of public welfare or child welfare has been established, the county board of child welfare may arrange with such city board or department of public welfare or child welfare to consolidate and coordinate city and county child welfare work in such manner as may be agreeable to the county board of child welfare and the city board or department of public welfare or child welfare and with such division of expenses as may to both seem equitable; provided, that every such agreement shall be approved by the court of county commissioners or board of revenue of the county and by the county board of education.

SEC. 7. All laws and parts of laws in conflict with this act are hereby repealed.

SEC. 8. If any section of this act shall be held unconstitutional in whole or in part, the fact shall not affect any other section of this act, it being the intention of the legislature in enacting this act to enact each section separately.

SEC. 9. This act shall take effect immediately upon its approval by the Governor.

4. Model County Organization Bill Recommended by the California State Department of Social Welfare¹

AN ORDINANCE CREATING A COUNTY DEPARTMENT OF PUBLIC WELFARE AND PRESCRIBING ITS POWERS AND DUTIES

The Board of Supervisors of ———County in the State of California do ordain as follows:

SECTION 1. A department of county work is hereby created to be known as the County Welfare Department; said department shall consist of seven members to be appointed by the Board of Super-

¹ [California developed county welfare departments without specific legislative authorization. In 1917, by amendment of an Act of 1901 providing for maintenance of the indigent, the legislature made it the duty of the county board of supervisors of every county and of every city and county to investigate applications for relief and to supervise persons receiving relief either by the board of the city or county "as a whole, or by committee or by such person or society as it may authorize" (*Statutes of California, 1917*, chap. 252, sec. 5). This was the legal basis for the organization of county departments. By 1932, 26 counties had county welfare departments, most of them organized in accordance with the model ordinance.—EDITOR.]

visors, two of whom shall be members of the Board of Supervisors. The members of the department shall serve without salary. The term of office shall be for four years except as hereinafter specified, subject to the power of the Supervisors to remove for cause any member of the department.

SEC. 2. As soon as the members of the departments are appointed, they shall organize and divide their number by lot into three groups; the first group shall consist of two members, the second group of two members and the third group of one member. The term of office for the first group shall be two years, the term of office for the second group shall be three years, the term of office for the third group shall be four years. The members from the Board of Supervisors shall be appointed annually.

SEC. 3. When a vacancy shall occur in the department, the Board of Supervisors shall confer with the members of the department in making appointment to fill the vacancy.

SEC. 4. Wherever in this ordinance the word "department" is used, it shall mean the County Welfare Department; the word "Board" shall mean the Board of Supervisors.

SEC. 5. The powers and duties of the department shall be as follows:

a) To appoint a secretary and such assistants as may be necessary to carry on the work of the department. The secretary shall be the executive officer of the department in charge of the work and shall not be one of the members of the department. The salaries of the secretary and assistants shall be fixed by the department, subject to confirmation by the Board and shall be allowed by the Board, together with necessary expenses, in the usual manner of such claims.

b) To investigate, determine, and supervise the giving of relief to persons applying for county aid and to devise ways and means of restoring them to self support where possible.

c) To cooperate with the county hospital, county almshouse, and the county jail and to assist the heads of those departments in matters of social service and investigation.

d) To investigate, determine and supervise the family homes where children may be boarded; the standards of investigation,

record and care to be in accord with those required by the State Department of Social Welfare with which State Department cooperation shall be maintained; for the purpose of carrying out the provisions of this section the department shall be authorized to receive children on commitment from the Juvenile Court under section 8 of the Juvenile Court law.

e) To cooperate with the Juvenile Court, the Probation Officer and Probation Committee.

f) To maintain through its paid secretary a modern system of records on the county relief cases according to forms and methods prescribed by the State Department of Social Welfare as provided in *Statutes of California, 1917*, p. 444. These records may be used as a confidential exchange by charitable and welfare organizations of the county to prevent overlapping of work.

g) To act as coordinating agency for all relief and other welfare agencies and societies of the county which care to avail themselves of the services of the department.

h) To cooperate with the State, County and City Health authorities in advancing and maintaining standards of housing, sanitation and other preventive health measures.

i) To assist with the State welfare work when possible and to utilize the information and services furnished by the State Department of Social Welfare, the State Department of Health, the State Department of Education, the State Bureau of Housing and such other State agencies as may be called into the county work.

SEC. 6. Applications for relief made to the Board or to any member thereof shall be referred promptly to the department for investigation and recommendation.

SEC. 7. The department shall file with the Board monthly a report of work done and shall render for the Board's approval a statement of relief claims against the county with the list of additions, deductions and changes; the department shall also file monthly with the Board a statement of expenses incurred in the usual manner of such claims.

SEC. 8. The department shall make all needful rules and regulations for the transaction of its business.

SEC. 10. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

5. The Children's Division of the Massachusetts Department of Public Welfare in 1933

FROM AN UNPUBLISHED REPORT BY THE UNITED STATES
CHILDREN'S BUREAU

The Department of Public Welfare through the division of child guardianship accepts children for care under five provisions of the law. The board of public welfare of a town and the superintendent and board of trustees of the State infirmary are required to commit any indigent or neglected "infant" having no known settlement in the State to the custody of the department.¹ The department may accept for care children under 21 who are dependent on public charity upon written application of the parent or guardian or if there is no parent or guardian the application of a friend or of the board of public welfare where the child is found.² The Boston juvenile court or the district courts may, following an adjudication of neglect, commit children to the custody of the department for temporary care or until they reach the age of 21 years.³ On December 1, 1933, of the 7,067 children under care by the division of child guardianship, 3,461 were neglected, 3,382 were dependent, 215 were delinquent, and 9 were wayward.

Social investigations are made by the subdivision of investigation before any dependent child is accepted for care by the division of child guardianship. Applications for care of dependent children are made directly to the division and a careful investigation is made as to the need for care and as to other available resources for meeting the problems presented. During the fiscal year of 1933 only 310 children were accepted for care out of 1,488 applications. Relatives assumed the care of a large number of the children for whom State guardianship seemed unnecessary while others were accepted for care by private or local public agencies.

All children are given the same type of treatment following acceptance no matter how they were originally received. Pending assignment to a visitor for placement in a foster home a child is cared for in one of the temporary foster homes selected by the division for this service. Seven temporary homes are maintained for children from 3 to 12 years of age, six for girls over 12, and three for boys over

¹ *Code of Mass. 1932*, chap. 119, sec. 22.

² *Ibid.*, sec. 38.

³ *Ibid.*, sec. 44.

12. The average time spent by children in a temporary home before placement is about three weeks. While in this temporary home a physical examination is given the child by the doctor on the division staff. If any condition is found which indicates need for continued medical care, surgery, dental care, refraction or other treatment the child is then referred to the proper agency for such service. Although these homes are really only larger foster homes the supervisor of the subdivision using the home supervises their management more closely than other foster homes.

The plan for the division of work in the department does not make for consideration of a family as a whole. For instance a family of four children including a boy 15, a girl 13, a child 8, and a baby 2 would be the responsibility of five workers; i.e., the worker from the subdivision of investigation would make the original visit to the home and each of the four children would be assigned to a different subdivision according to their various ages. The division of child guardianship recognizes the value of family ties, and it is the policy to place children of the same family in the same home or in the same neighborhood whenever possible.

Each child is given a complete outfit from the clothes room in the central office when he is first placed in a foster home and thereafter the foster mother is allowed \$4 a quarter for clothes for a child under 3, \$5 for the child from 3 to 6, and \$8 for the child over 6 exclusive of a winter coat or suit for which an additional allowance is given every other year. A special allowance of \$15 is given to purchase a graduation outfit on graduation from high school. Certain other additional expenses are allowed for the children, such as two hair cuts a quarter, tooth brushes and tooth powder, and medical supplies. For infants provision is made for any food that must be purchased from the drug store.

The need for economy during the last few years has made it necessary to reduce the regular rate paid for board from \$4 per week to \$3.50 for infants and from \$3.50 to \$3 for children over 3. However, one home was in use at the time of the visit to the State in 1934 in which children with special physical disabilities had been placed to board at \$6 a week.

Children under the age of 3 are supervised by nurses instead of

social workers as it is felt that physical care is of the greatest importance for this group. At the close of the fiscal year November 30, 1933, there were under care 472 children under 3 years of age with a total of 779 cared for during the year. Each nurse has a case load of about 100. Monthly visits are made to these children at which time the child's food, clothing, development, and general health and welfare are considered. It is the policy of this subdivision never to place more than four children in one foster home and when this is done not more than two are under 2 years of age. When the child becomes 3 years old he is given a second general physical examination and is then transferred to a visitor caring for older children who places him in another foster home.

The group composed of children from 3 to 12 years is the largest group in the division, the number under care on December 1, 1933, being 3,152. The average case load of the visitors is about 160 with the maximum 195 and the minimum 121. Quarterly visits are made to each home and the child, the foster home, and, if the child is in school, the school teacher is seen. Boys over 12 years of age are under the care of the subdivision of older boys, and girls over 12 under the care of the subdivision of older girls.

Supervision of State wards placed for adoption is the responsibility of one worker in the division. Three classes of children may be placed in adoptive homes: dependent children whose custody has been voluntarily relinquished by parents or guardians, deserted children who have been under care for two years and whose parents have not been located after advertising, and neglected children in whom the parent has shown no interest and who have been under care for at least two years. As a rule foundlings are also kept two years before adoption is considered, although they may be placed in adoptive homes before reaching the age of 2. Children who are available for adoption are referred by the visitors to the adoption worker, who makes an investigation to determine whether or not adoption is desirable and if so then makes the placement in the foster home best suited to the particular child under consideration. Investigation of an adoptive home is somewhat more extensive than the investigation of foster boarding homes, but is largely limited to the physical aspects of the home and the economic status of the

family. A good deal of dependence is placed on written references although a few persons are usually seen.

The division usually insists that a child be in a home for at least a year before the final adoption is permitted. During the fiscal year ended November 30, 1933, 29 adoptions of State wards were consummated. Twenty-eight children were placed for adoption during the year, making a total of 54 children in adoptive homes under supervision at the close of the fiscal year.

Medical care for State wards is provided in several ways. As a general rule local physicians are used for children in foster homes, the foster mother having the physician of her choice. Whenever practicable, children are sent to the Massachusetts Hospital School at Canton for prolonged medical care or for surgical treatment. Children needing intensive treatment for venereal disease are sent to the State infirmary at Tewksbury. The infirmary also provides care for pregnant girls, for children with tuberculosis and chronic disease, and for feeble-minded children who cannot be admitted to the State schools or cared for in boarding homes. Local dentists are used but dental work costing more than \$5 must be approved before it is undertaken. Refractions are for the most part cared for by an oculist in Boston.

Cost of maintenance.—The appropriation for 1933 for board and maintenance of State wards amounted to \$1,278,000. Cities and towns are responsible for maintenance of dependent children committed to the department. If parents or relatives are able to pay for support of children they are expected to do so. During the fiscal year 1933 the department collected \$19,045 from parents and relatives and \$180,035 from the cities and towns.

In addition to expenditures for board and medical care the department pays tuition for every child under its care who is attending the public schools of the State. The tuition paid varies from \$1 to \$3 a week, depending upon school costs of the respective cities or towns. During 1933 and 1934 an annual appropriation of \$300,000 has been made for this purpose.

Records.—The records of all children from one family accepted by or committed to the Division of Child Guardianship are kept in one folder. The report of the family investigation made by the sub-

division of investigation is made on blue sheets so that it may be readily distinguished from the records of individual children. A visible index contains cards for all children cared for since its installation some 10 years ago. Records are limited to the briefest possible recital of the conditions found and probably fail to give much of the information possessed by the worker. Limited stenographic service is probably to a great extent responsible for the brevity of the records, as visitors are only allowed an hour a week for dictation of records and correspondence.

Children boarded by cities and towns.—Cities and towns are required to report to the State department all children placed out in family homes at their expense and all children in local infirmaries, and it is then the duty of the department to visit such children at least once each year. This duty has been assigned to the visitors in the division of child guardianship who make the "town visits" in the course of their supervision of State wards. The visitor makes a brief report on each inspection on a special blank prepared for this purpose and these are sent to the commissioner's statistical department which compiles from them certain facts for the annual report of the department. During the fiscal year ended November 30, 1932, 1,641 children in foster homes and 115 children in infirmaries were visited. Undoubtedly a few very undesirable situations are uncovered by reason of these visits but otherwise they mean very little.

6. Reorganization in Washington in 1937

A. THE CHILD WELFARE DIVISION IN THE STATE DEPARTMENT

LAWS OF THE STATE OF WASHINGTON, 1937, CHAP. 111

Be it enacted by the Legislature of the State of Washington:

SECTION 1. There is hereby created a department of the state government which shall be known as the department of social security. The chief executive officer thereof, who shall be designated the director of social security, shall be appointed by the governor, with the consent of the Senate, and shall hold office at the pleasure of the governor. If the Senate be not in session when this act takes effect or if a vacancy occur while the Senate is not in ses-

sion, the governor shall make a temporary appointment until the next meeting of the Senate, when he shall present to the Senate his nomination for the office.

SEC. 2. The department of social security shall be organized into and consist of six divisions to be designated, respectively, (1) the division of public assistance, (2) the division of old-age pensions, (3) the division of unemployment compensation, (4) the division of employment service, (5) the division for children, and (6) the division for the blind.

SEC. 3. The director of social security shall have general charge and supervision of the department of social security and shall have power to employ such clerical and other office personnel as may be necessary for the general administration of the department.

SEC. 4. The director of social security shall appoint and deputize six assistant directors to be designated, respectively, the supervisor of public assistance, the supervisor of old-age pensions, the supervisor of unemployment compensation, the supervisor of employment service, the supervisor of children and the supervisor of the blind, who shall have charge and supervision, respectively, of the division of public assistance, the division of old-age pensions, the division of unemployment compensation, the division of employment service, the division for children and the division for the blind. Each such assistant director shall have power, with the approval of the director of social security, to appoint and employ such assistants and clerical and other office personnel as may be necessary to carry on the work of his division.

SEC. 5. The director of social security shall have power, with the approval of the governor, to make such rules and regulations as may be necessary to carry out the powers and duties of his department.

SEC. 6. [Relates to relief.]

SEC. 7. [Relates to old age assistance.]

SEC. 8. [Relates to unemployment compensation.]¹

SEC. 9. [Relates to employment service.]¹

SEC. 10. The director of social security shall have the power and

¹ [Washington is the only state which has placed unemployment compensation and the employment service in the general Public Welfare Department.—EDITOR.]

it shall be his duty, through and by means of the division for children:

1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the division of child welfare of the department of public welfare.

2) To exercise such other powers and perform such other duties as may be prescribed by law.

SEC. 11. [Relates to the blind.]

SEC. 12. [Relates to receiving and administering federal grants-in-aid.]

SEC. 13. [Abolishes the Public Welfare Department as of April, 1, 1937.]

SEC. 14. [Provides for transfer of documents and records of the Department of Public Welfare.]

SEC. 15. [Repeals all acts in conflict with this act.]

B. THE STATE PROGRAM FOR CHILDREN OF WASHINGTON IN 1937

LAWS OF THE STATE OF WASHINGTON, 1937, CHAP. 114

SECTION 1. *Aid to dependent children.*—For the purpose of this act the term "dependent child" means a child under the age of sixteen (16) years who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandmother, grandfather, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, in a place of residence maintained by one of [or] more of such relatives as his or their own homes. The term "aid to dependent children" means money payments with respect to a dependent child or dependent children.

SEC. 2. There is hereby adopted a statewide plan for aid to dependent children: It shall be the duty of the state department of social security, and the department, through and by means of the division for children, is hereby empowered to serve as a single state agency in the administration of this act, and to exercise such supervision and promulgate and enforce such rules and regulations as are necessary to assure full local compliance with the terms of the Federal grants.

SEC. 3. Such aid shall be granted in such amount as will, when added to the income of the family, provide dependent child or children with a reasonable subsistence compatible with decency and health. The amount of aid to be granted in each case shall be determined upon the basis of need and in view of the particular facts and circumstances of each case.

SEC. 4. [Requires one year of residence in the state for eligibility for aid to dependent children.]

SEC. 5. The department of social security, through and by means of the division for children, is hereby designated as the responsible agency for the administration of the aid provided by this act, and it is authorized and directed to formulate in detail and administer the plan established by this act in such manner that allotments or grants from the Federal government may be made available for the support of dependent children. The details of such plan shall be formulated in such manner as to meet with the approval of the Federal agencies created or designated to administer Federal aid to states providing for aid to dependent children.

SEC. 6. *Child welfare services.*—The department of social security, through and by means of the division for children, shall have the power to cooperate with the Federal government, its agencies or instrumentalities in developing, administering and supervising a plan for establishing, extending aid and strengthening services for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent and to receive and expend all funds made available through the department of social security by the Federal government, the state or its political subdivisions for such purposes.

SEC. 7. *Services to crippled children.*—The department of social security, through and by means of the division for children, shall have the power: To establish and administer a program of services for children who are crippled or who are suffering from conditions which lead to crippling, which shall provide for developing, extending, and improving services for locating such children, and for providing for medical, surgical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and after care; supervise the administration of those services, included in the program, which

are not administered directly by it; extend and improve any such services, including those in existence on the effective date of this act; cooperate with medical, health, nursing, and welfare groups and organizations, and with any agency of the state charged with the administration of laws providing for vocational rehabilitation of physically handicapped children: To cooperate with the Federal government, through its appropriate agency or instrumentality, in developing, extending, and improving such services; and receive and expend all funds made available to the department by the Federal government, the state or its political subdivisions or from other sources, for such purposes.

SEC. 8. It is hereby provided that an applicant or recipient of public assistance or services, as provided in this act, who shall be dissatisfied with the decision of his application for such public assistance or services may appear before the board of county commissioners in the county in which he resides, relative to said complaint. If such complainant is still dissatisfied, he may appeal to the director, and upon such appeal an opportunity shall be granted for a hearing.

SEC. 9. Any person claiming benefit under this act shall file an application with the local administrative board in the county of residence. The local administrative board shall fully establish the facts set forth in the application and any other facts it deems necessary. The department shall have power to issue subpoenas for witnesses, compel their attendance and examine them under oath.

SEC. 10. [Prohibits assignment or transfer of aid granted.]

SEC. 11. The supervisor of the division for children shall make a detailed report to the director of social security within ninety days after the first of each calendar year showing all appropriations received and how the same have been expended, and covering its activities and accomplishments for the preceding year, and making recommendations therein for the further improvement of any of the provisions of this act.

SEC. 12. The department of social security, through and by means of the division for children, is hereby empowered and authorized to cooperate with the Federal Social Security Board and the United States Children's Bureau in any reasonable manner as may be neces-

sary to qualify for Federal assistance for aid to dependent children, child welfare services and services to crippled children in conformity with the provision of the Social Security Act; including the making of such reports in such form and containing such information as the Federal government, or the proper agency having authority in the premises, may from time to time require, and comply with such provisions as the Federal government may from time to time find necessary: *Provided, further*, Nothing in this act shall be construed as authorizing any state official, agent, or representative, in carrying out any provisions of this act, to take charge of any child over the objection of either of the parents of such child, or of the person standing *in loco parentis* to such child.

SEC. 13. The director of social security shall be empowered to promulgate such rules and regulations as shall be necessary to effectuate and carry out the purposes of this act.

SEC. 14. The funds necessary to carry out the provisions of this act shall be made available from the revenues provided by the Federal, state and county governments for public assistance.

SEC. 15. The department of social security, through and by means of the division for children, is authorized to receive moneys by gifts or bequests and expend the same for any of the objects and purposes set forth under this act; and shall include in the annual report to the director of social security a statement of the moneys so received and expended.

SEC. 16. [Repeals acts in conflict with this Act.]

SEC. 17. [Provides for separability of parts, sections or clauses if any such is held unconstitutional.]

SEC. 18. This act is necessary for the immediate preservation of the public peace, health and safety and the support of the state government and its existing public institutions and shall take effect April 1, 1937.

7. The Provisions of the Social Security Act Relating to Child Welfare Services

49 UNITED STATES STATUTES 633 (1935), TITLE V, PART 3

SECTION 521. (a) For the purpose of enabling the United States, through the Children's Bureau, to cooperate with State public-

welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, public-welfare services (hereinafter in this section referred to as "child-welfare services") for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of \$1,500,000. Such amount shall be allotted by the Secretary of Labor for use by cooperating State public-welfare agencies on the basis of plans developed jointly by the State agency and the Children's Bureau, to each State, \$10,000, and the remainder to each State on the basis of such plans, not to exceed such part of the remainder as the rural population of such State bears to the total rural population of the United States. The amount so allotted shall be expended for payment of part of the cost of district, county or other local child-welfare services in areas predominantly rural, and for developing State services for the encouragement and assistance of adequate methods of community child-welfare organization in areas predominantly rural and other areas of special need. The amount of any allotment to a State under this section for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under this section until the end of the second succeeding fiscal year. No payment to a State under this section shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

b) From the sums appropriated therefor and the allotments available under subsection (a) the Secretary of Labor shall from time to time certify to the Secretary of the Treasury the amounts to be paid to the States, and the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, make payments of such amounts from such allotments at the time or times specified by the Secretary of Labor.

8. Progress Reports of the Child Welfare Services of Three States

CHILD WELFARE SERVICES IN RURAL AREAS PROVIDED UNDER THE
FEDERAL SOCIAL SECURITY ACT, TITLE V, PART 3

CHILD WELFARE DIVISION, UNITED STATES CHILDREN'S
BUREAU, APRIL, 1938¹

WASHINGTON

OBJECTIVES

By means of the Federal funds made available for Child Welfare Services, it is aimed to extend the Child Welfare Service Program in the State in an effort to accomplish the following:

1. To study the needs of children in the State and facilities for their care with the purpose of developing, in cooperation with the private agencies, local and State-wide resources for the care of dependent, neglected, and handicapped children, and children in danger of becoming delinquent
2. To furnish case-work services to the juvenile court judges when requested; to assist in making plans for children either in their own homes or outside their own homes, with emphasis upon and in an effort toward prevention of delinquency
3. To develop foster homes for children who need this type of care and provide adequate supervision of children placed in these homes
4. In cooperation with the public health nurses to assist in the location of crippled children, securing the needed treatment for them and—follow-up supervision when they are returned from the hospital centers to their own homes
5. To develop facilities for psychological services for children in areas where such service is not now available

STATE SERVICES

Field service.—The Division for Children has provided supervision and consultation service through the acting supervisor of the Division and through a psychologist who consults with workers regarding children in areas where there are no other psychological services available.

¹ Mimeographed material not available for general distribution.

The acting supervisor of the Division has made several visits in a number of areas in the State. Individual conferences have been held with the child welfare service workers and the local administrators and supervisors, discussing the organization of child welfare services in the counties and case-work procedures. During these visits she has also had individual and group conferences with the juvenile court judge and interested citizens in the community.

New members of the child welfare service staff from two counties and one of the supervisors were brought into the State office for a conference to introduce them to the program.

A meeting of child welfare service workers in the five northwest counties was held in August, when relationships with the juvenile court and the private institutions in that area were discussed.

Following the State Conference of Social Work in October, a two-day institute was held for all of the child welfare service workers. This was given over to a round-table discussion of methods of organizing a community for child welfare services, methods of foster-home finding, study of foster homes and case work with children. At this time some of the workers reported on progress of work in their own communities.

Training.—At present funds are being provided by the State Department of Social Security for fellowships for 16 staff members, four of whom were previously in the Children's Program, who are receiving training in Graduate Schools of Social Work. We anticipate securing some of these people for the child welfare service program. Some workers in Seattle are being allowed certain hours off to take courses in the Graduate School of Social Work while they continue their work in the Children's Division of the King County Welfare Department.

The "In-Training Center" for child welfare service workers was begun in September 1937 under the direction of a graduate of the School of Social Service Administration of the University of Chicago who has had experience in family and children's work. The Training Center is located in the Pierce County Welfare Department, Tacoma. The first group of five workers remained in the center from September until the end of December. The second group of six workers will remain from January 1 to May 1, as it was planned that

the Training Center will operate on a quarterly basis. For the most part workers have been selected who have had some work in a graduate school of social work and have shown by the quality of their case work that they are good material for child welfare service workers. The first group of workers were all placed in child welfare service positions in the Child Welfare program. It is the plan as the program develops to send workers to the Training Center who will return to the counties to carry cases of aid to the dependent children or a general case load, as it is thought to be desirable to bring up the general level of understanding of children's work by all case workers.

Co-operation with Crippled Children's Service and with other state medical and health programs.—The child welfare service workers co-operate with the county nurses in locating crippled children, arranging for them to attend the clinics and to secure the necessary treatment, and providing follow-up services when the child returns from the hospital center to his own community. This involves working out educational and vocational plans with the child and his family.

The child welfare service workers and medical social workers have met with the county nurses and the State Supervisor of Public Health Nursing in the northwest and northeast sections of the State.

The child welfare service workers have secured foster homes to be used as convalescent homes for crippled children in the hospital centers. They also supervise the children placed in these centers.

The State Supervisor of Public Health Nursing is a member of the State Advisory Committee on child welfare services (this committee also serves as an Advisory Committee to the Division for Children).

Psychological services.—The psychologist of the Division of children has concentrated his services in southwest Washington from the time he came to the program in September until December 1937. His services have been very valuable in helping to analyze the problems of children and in interpreting child welfare service work to the schools and to the judges. He gave considerable time to the group of children included in the demonstration of social work in the schools. His work there has been welcomed by the

superintendent of that school who, partly at least as a result of this, is recommending to the State Educational Planning Council the development of psychological services on a State-wide basis under the State Department of Education.

The psychologist has examined all children under the Crippled Children's Program for whom other psychological services are not available, and about whom there is any question as to eligibility to the program because of low mentality, and all crippled children who have needed his services for any other reason.

Library.—Library service for the child welfare service workers has been built up as a part of the library for the State Department of Social Security. Special reading lists have been prepared and sent to workers. An amount has been budgeted so that new books on children's work may be added to the library from time to time.

Indian children.—The salary of one children's worker for Indian children in Stevens and Ferry counties is being paid by the Indian Service. She is on the staff of the Stevens County Welfare Department, transportation and office space being furnished by that county. She works very closely with the child welfare service worker who is being paid for through Federal child welfare service funds in that county, attending the meetings of the child welfare service workers, and so forth. She was previously paid from child welfare service funds and worked in the same county.

At the request of the Bishop of the Diocese of Seattle, a study was made to determine the need of the continuance of a Catholic School for Indian children. The situations of 70 Indian children in eight counties were studied by child welfare service workers. Through child welfare services workers, it was found that most of the children did not need institutional care and alternative plans were worked out for many children.

LOCAL SERVICES

There are 35 child welfare service workers in the county welfare department, of whom 10 are being paid for through Federal funds. These 10 workers are in rural areas where many of them are doing pioneer work in furnishing case-work service and developing facilities for the care of dependent, neglected and handicapped children.

They are a part of the county welfare department staff and are responsible to the administrator, with general supervision through the field supervisors who serve the whole State Department of Social Security, and from the Division for Children of the State department.

Schools.—Two demonstrations of social work in schools have been carried on during the six months. The child welfare service worker in Clark County has given one-half time to work in the Ridgefield School, a rural consolidated school, with children who are referred because they are problems in school. Many adjustments have been worked out for children, and the project has been very well accepted by the superintendent and teachers who would like to add the child welfare service worker to their staff. It has not yet been decided whether the School Board will assume her salary for the coming year, however.

Psychiatrist.—Through the child welfare service worker's efforts, the school budgeted money to pay for the services of a psychiatrist for four days at two-month intervals. The child welfare service worker refers children whom she has worked with preparing the family and child for the psychiatrist. Complete physical examination by the county physician has been secured on all children referred, and the psychologist for the Division for Children has made psychological examinations of all of the children. A meeting has been held after each series of examinations at which the psychiatrist, psychologist, social worker and county physician report their findings and the cases are discussed with the teachers and others interested. This has proved to be an excellent method of educating the teachers in the need for social service. Many of the other school people in this and neighboring counties have become interested in child welfare services through hearing of the work done in the Ridgefield School. The superintendent of this school is the chairman of the Advisory Committee to the Division for Children, and State Child Welfare Chairman of the American Legion.

Schools.—A child welfare service worker in the Thurston County Welfare Department has given full time to working with children in the Olympia Schools, referred because of problems. She is con-

centrating her services in three schools in the city, but accepts cases from other schools.

Community.—Through the child welfare service program, the counties have become much more child-welfare conscious than they have ever been before. As the workers have worked with particular children at the request of the judges, schools, Parent-Teacher Association members and others in the counties, there has begun to be a recognition of what can be accomplished for children. Many more requests for workers are now received than can possibly be provided with the limited funds. One of the administrators has expressed the feeling that the child welfare service workers are doing the "creative" work in the community and that their influence is being felt in the attitude of the community toward the whole program of the county welfare departments.

Foster care.—Legislation was passed in the spring of 1937 creating county welfare departments to handle child welfare services as well as other functions. In August 1937 the Superior Court Judges in conference with the Division for Children, State Department of Social Security, decided that all dependent children would be referred to the county welfare departments. There was first a gradual referral of children from the courts, but as of January 1, 1938, all dependent children were taken over by the county welfare departments for planning and payment for foster care. Most of these children were in institutions, but some were in boarding homes. The child welfare service workers are responsible for a re-evaluation and study of each case.

Agencies and institutions.—It is also interesting to note that in this State which offered very little besides private institutional care for children prior to the development of child welfare services, one institution for children has closed within the past six months as there were not sufficient children needing that type of care to warrant its keeping open. In each section of the State, there are institutions for children which are considering changing their programs to meet the needs for care of special groups of children. It is, of course, impossible to state to what extent this is due to the development of the child welfare service program, but at least it is going hand in hand with it.

KANSAS

OBJECTIVES

1. To maintain in the State Board of Social Welfare of Kansas, a Division of Child Welfare Services to set up, extend, and strengthen public welfare services for children, with a supervisor of child welfare services to organize and develop the program in the State, districts and counties
2. To coordinate child welfare service work with the whole welfare program of the State Board, which has administrative responsibility for supervision of public assistance in the counties, contributes toward county public assistance payments and has general responsibility for research and statistical work, prevention of blindness, rehabilitation of blind persons, and licensing of private agencies and for child welfare
3. To cooperate in every way possible with the Divisions of Social Welfare, of Research and Statistics, of In-Service Training and Personnel and of Public Relations
4. To develop cooperation for services to children with child welfare agencies and institutions in the State
5. To provide psychiatric social work and other case work service for children in connection with mental hygiene clinics available in the communities and traveling state clinics
6. To supply lecture and educational exhibit service on child welfare for interested groups
7. To provide advisory and consultant service in relation to problems of Negro, Mexican, and Indian children
8. To provide for educational leaves to attend schools of social service for workers in the public welfare field preparing themselves for State or county child welfare work
9. To supply supervisory and advisory service for local public welfare agencies in relation to child welfare and stimulation of further development of local services for children
10. To give training in child welfare to county workers through:
 - a) A consultant in child welfare, visiting county welfare administrations, reading and discussing case records, and giving instructional and consultation service, working in co-operation with the district field representatives

- b) A consultant service in psychiatric social work for county staffs in cooperation with district field representatives
 - c) Supplying child welfare informative material to county workers through the consultants; cooperation with district associations of social workers, aiding in discussion of child welfare problems and making of child welfare studies
 - d) Supplying books and pamphlets for state lending library service for county workers on subjects relating to child welfare
11. To establish and maintain local units for intensive case work and community development service for children on a demonstration basis, using certain ones of these units as training centers for selected case workers for service to children under skilled supervision
 12. To develop child welfare advisory committees in connection with State and local services

STATE SERVICES

Organizing local services.—Plans have been developed jointly by the county welfare director, county commissioners, county case committee and others in the county and the State supervisor of child welfare services and other workers in the State agency, for a new county child welfare demonstration unit. This is to be opened in January in McPherson County in central Kansas and is to be in addition to the units already established in Jefferson County in the northeastern part of the State and Finney, Grant and Haskell counties in the southwest. The new unit is being set up, as the earlier ones were, at the request of the county welfare director and county commissioners, with provision for participation from the county, and with expression of interest and offers of cooperation from other agencies, public and private, within the county.

The county has been chosen as one having excellent possibilities of useful work for children during the demonstration period and good hope of continuance later of specialized child welfare service on a permanent basis. It is a predominantly rural county, but includes important educational institutions.

Furnishing consultation service.—The state supervisor of child welfare services, the state child welfare consultant and the psychi-

atric social worker will give consultation service to the demonstration units. This is supplied through correspondence and by visits of unit workers to the State office and of State staff to the units.

Aid has been given to staffs of other counties through correspondence with State workers and by the child welfare consultant and the psychiatric social worker visiting county welfare administrations, reading and discussing case records involving problems of children, and giving advisory service of various kinds as needed. The consultant and others on the child welfare staff have participated in the activities of the district associations of county social workers by taking part in meetings and assisting as desired in committee service.

Developments in training program.—In addition to the continuance of training of five workers in the demonstration units and in-service training to county workers through the consultant and supervisory program, educational leaves have been granted.

Library.—The child welfare library is extensively used in connection with the training program in the demonstration units and elsewhere.

Cooperation with crippled children's service and with other state medical and health programs.—There has been close cooperation with the State Health Department's Maternal and Child Health and Public Health programs, with the Kansas Crippled Children Commission work, and with the hospital and clinic system of the State University. The State staff have urged upon county workers full utilization of resources afforded by these agencies and have aided in distributing and bringing to special attention informative literature regarding the agencies and the problems and needs with which they deal. Workers of the agencies have given valuable advice and help in connection with child welfare services.

Integration with the state welfare agency.—The Child Welfare Services work has been carried on under the State Board of Social Welfare of Kansas, established in 1937. The Child Welfare Services are integrated with the whole state welfare program. The traveling field work of the state child welfare consultant and the psychiatric social worker has been planned jointly with the supervisors of social welfare and of public assistance and the general field staff of the State Board. There has been pooling of information as to problems and

needs. Similar relationship has existed between the Child Welfare Services and the Division of Research and Statistics, and is being developed with the Division of Public Information.

Psychiatric social service.—A psychiatric social worker has been added to the State child welfare staff. A number of counties in the same general section of the State have been using a mental hygiene service provided by one of the Kansas State hospitals. The psychiatric social worker has aided the counties by giving assistance in the selection of children's cases and preparation of case histories and treatment. Plans have been made for her to participate in a course of lectures on mental hygiene and related topics to be given for county workers at the hospital.

Lectures and discussions for outside groups.—The state staff have continued to supply, on request, lecture and discussion service on topics relating to children for interested groups of varied types.

Child welfare educational exhibit.—The traveling child welfare exhibit has been repainted and touched up after the hard service it has seen, and new charts have been prepared to bring statistical and other information up to date. It will continue to be used in connection with lectures and discussions.

Library.—There is constant use of the lending library of child welfare books and pamphlets by State and county welfare staffs, workers in cooperating agencies, and other interested persons. This is a part of the general social welfare library of the State Board.

Colored, Mexican, and Indian children.—A colored worker was continued one-fourth time for child welfare services during the months of July and August. She gathered information on the needs of colored children in the State and maintained informative and mutually helpful contacts with agencies, institutions and individuals serving colored children.

The Indian Agency in Kansas is asking social service help in relation to Indian children. Plans for cooperation in study of needs and as desired in consultant and advisory service are under consideration.

Work with broken homes.—The extent of separation of children from their own homes and parents and of attempts at inter-county and inter-state placement of children has continued to present seri-

ous problems, coming to light through visiting consultant work in counties, inter-agency correspondence and in other ways. The State staff have tried to arouse interest of county workers, of other agencies which can help, and of the community in the broken home situation, in the complex factors back of it, and in possibilities of constructive work.

Cooperation with private agencies and institutions.—The Child Welfare Services Division has cooperated with child caring, family welfare, educational, recreational, mental hygiene and rural life institutions and agencies, state-wide and local, and with other agencies in related fields. Programs of work have touched at many points, and representatives of these agencies have given advice and help in connection with the State child welfare program.

LOCAL SERVICES

The general types of local services are indicated above. The child welfare workers in the four counties in which demonstration unit service is already in operation are members of the county welfare administration staffs. Their appointments are approved by the boards of county commissioners. Their work is under administrative supervision of the county welfare directors.

Coordination.—The county workers do case work with children in non-relief as well as relief families. The leaders give consultant service to the regular county workers in addition to the training of the students. The demonstration units not only are integral parts of the county public welfare administrations but also are in close cooperation with the work of the juvenile courts, the school systems and the county health agencies. There is active mutual cooperation, too, with other public agencies and with private agencies within the unit counties or outside promoting welfare activities in the counties.

Health.—Two unit counties which had not been having public health nursing service have made arrangements within the period for such work. One county has radically reorganized its entire system of medical care for clients in order to give better service.

Foster care.—In all the unit counties boarding care is provided for

certain children who cannot be with their own families and who need foster home care rather than institutional life.

Recreation.—Volunteer work in the demonstration units is proving helpful. In one county, for example, a volunteer worker is not only giving regular time to club work for some boys in whom the unit is interested, but is also doing the reading prescribed for the students, attending staff conferences, and in every way possible taking advantage of the training opportunities afforded by the unit. The club has recently been offered free quarters by a business man who had formerly reported trouble from the same boys from wanton breaking of windows. The community in which many persons had been pessimistic in the beginning as to the possibility of accomplishing much with this group of youngsters is now giving splendid cooperation. "Our Gang" has become the "Our Gang Club." A generous friend has donated swimming tickets for the boys—much prized in this arid county. Neighbors have given a stove and sections of stove pipe for the club room, and boxes to supply work for carpentering. The boys are interested in building furniture.

Community.—The unit leaders are called upon for community interpretation work both within and outside of the unit territories. They give lectures and discussion service on request for professional and lay groups of different types, and take part as desired in district association activities. Recently, for instance, the leader of the southwest unit has been asked to give cooperation to district association committees which are undertaking study projects regarding adoptions, children of unmarried parents and children in institutions.

TENNESSEE

OBJECTIVES

In an effort to set up a Child Welfare program within the Child Welfare Division on a State-wide basis, these objectives will be followed:

1. A study of State resources by trained child welfare personnel with a view to determining existing resources in this field.
2. A selection of areas, predominantly rural, for demonstration work where welfare services for the protection and care of homeless,

dependent and neglected children and children in danger of becoming delinquent may be established, extended and strengthened.

3. An offer of consultant and case-work service for child welfare problems furnished by specialists in the field of child welfare work to all counties in the State desiring such service.

4. A study of the present population of the Tennessee Industrial School with the purpose of discovering the causes of commitments and the developments of substitute programs of care. In addition to the population of the Tennessee Industrial School, this staff will also study a portion of the population at the State Training and Agricultural School for Boys as requested by the Superintendent.

5. A State-wide study of all children in almshouses in an attempt to develop substitute plans of care.

These services will be rendered by the staff of the Child Welfare Division, including the supervisor of training, the case consultant, district case workers, and the personnel employed as full-time workers in the selected demonstration units. In addition, an intensive training program for the field staff, institutes in general child welfare problems for workers in each of the 95 counties of the State, and scholarships in recognized schools of social work for the special training of child welfare workers, will complete the scope of the proposed plan.

STATE SERVICES

Organizing.—The plan for the administration of Child Welfare Services was approved on May 1, 1937; the plans for the three categories of public assistance were approved in July 1937. Up to that time the State organization of the Department of Public Welfare was being completed and plans and budgets were being drafted. Early in June Regional Directors were appointed and reorganization of county staffs began soon afterwards. The establishment of a new State division, the Personnel Division of the Department of Administration, in which was vested the authority for the administration of the merit system law enacted in February 1937 and by whom all personnel had to be approved, delayed the organization and functioning of the Public Welfare Department as a whole.

The State-wide organization for Public Welfare began to gain some stability, and in September it was possible to effect coordina-

tion and integration of Child Welfare Services into this structure. It was necessary first to familiarize the county staffs with the philosophy and provisions of the law and the procedure necessary to its administration before going too far in building up a demand for services which the newly created Department was not yet prepared to render. However, a large number of requests from the community were met by members of the Child Welfare Services staff to speak to interested groups about the new services, and cases referred had been given attention either by the local staff members or the State Child Welfare Services staff. Cooperation with county judges who have heretofore carried the burden of determining what happened to dependent, neglected and delinquent children has been promoted by each member of the Child Welfare Services staff, either through personal conferences or through encouraging local workers to secure the judge's participation and approval of plans for individual children. This has resulted in some instances in their referring cases to the State Department rather than committing them to the Industrial School or the State Training and Agricultural School.

The emphasis in organizing local services has therefore been on strengthening the county welfare organization and developing cooperative relationships with county officials. The change in the plan in September to limit the number of county demonstration units to the two established in June rather than developing nine as originally outlined and substituting regional demonstration areas instead has resulted up to this point in extensive State-wide organization rather than intensive localized organization. The thinking back of this is that it is better not to stimulate a demand for services until the personnel is available to give it and it is better not to fill a position in Child Welfare Services unless it can be filled by a person equipped to do the job well.

Up to June 30th Tennessee people who met the qualifications set forth in the approved plan were available, but with the demand for social workers in W.P.A., in other Divisions of the Department of Public Welfare, of the National Reemployment Service, and because of the relatively low salary schedules, it became necessary to look elsewhere for experienced child welfare workers who might be challenged by a pioneer job. Through the Director's interpretation of

the purposes and objectives of the program and the need for well equipped personnel and the interest and backing given by the Commissioner and the Governor, it was possible to bring into the State several people experienced in child welfare to serve as consultants.

Field service.—The duties of the case consultants during this six months growing period have been threefold: (1) some direct handling of cases up to the middle of September; (2) supervision of county workers with cases involving children; (3) organizing, planning content, and conducting institutes for county workers.

After the addition of a third consultant and a special child welfare worker, the State was divided into three sections and groups of regions were assigned to each consultant. All cases being handled directly by consultants were transferred to unit workers to be carried under the supervision of consultants, or to the special child welfare worker. These transfers were made as rapidly as each situation permitted.

The relationships among members of the staff is informal but standards of professional performance are high. Consultants participate freely in formulating policies and procedures and are given full responsibility in the performance of the duties assigned to them. Conferences are held upon the consultant's requests as a schedule is not practical at the present time. Consultants have participated in the staff meetings held for the Industrial School Project and attend Regional and State staff meetings when they are in the State office.

Training.—The training program under Child Welfare Services is threefold: (1) supervision of unit workers on the job in their handling of family and children's problems; (2) offering an opportunity for professional education at recognized schools of social work through educational leaves; (3) institutes.

Five educational leaves were granted for the fall quarter. Two workers went to the School of Social Service Administration in Chicago, and three to Tulane, each person selecting the school which she wished to attend.

Beginning in December a series of institutes was held in each of the three regions. An attempt was made to plan these institutes according to the individual needs of the Regions. These needs were

based on the evaluations of the regions made by the field staff, the Regional Director and the case consultant. In addition to this, each county worker was asked to send in questions and subjects that she would like to have discussed at an institute. These institutes were conducted by the case consultant and the representative of the Field Service Division in each region. They were planned for a two-day duration at intervals of a month or two months apart for four institutes. This first institute was planned with the purpose of giving the workers some general basic philosophy. The first day was spent in a discussion of the questions that the workers had sent in.

Co-operation with Crippled Children's Service and with other state medical and health programs.—Members of the Child Welfare Services staff have had contact with Crippled Children's Service on some eight or ten cases, and there have been numbers of others referred by county workers. Both Departments understand that in cases where a home would have to be found for a child irrespective of his physical condition that case would be the responsibility of the Child Welfare Services and Crippled Children's Service would be regarded as a hospital or any other medical resource. However, when placement is conditioned upon the child's physical condition and the condition is responsible for his being in need of placement, then the plan at present is that the Crippled Children's Service will select and pay for the boarding home or whatever care is indicated while the case is under their guardianship.

The State Department of Health makes voluntary inspection visits to child-caring institutions on the request of the Supervisor of child-caring institutions. In the Lauderdale County Demonstration Unit there has been more opportunity for working cooperatively and both the Health Unit and the Child Welfare Worker refer cases as the need arises.

In Bradley County there is no health unit. Through the efforts of the worker county funds have been appropriated for meeting medical costs for specific cases.

Community interpretation.—There has been much interest shown throughout the State in the establishment of the new Department of Public Welfare and in the administration of the Social Security Act. Members of the staff have received invitations from civic, pro-

fessional and church organizations including the American Legion Auxiliary, Parent-Teachers Association, study clubs, Business and Professional Women's Clubs, radio broadcast, etc. Representatives of the Child Welfare Division have made sixty-eight talks in which the work of the Division was interpreted in every section of the State.

Consultant service to the department licensing child-caring agencies.

—One provision in the Tennessee Plan reads:

The State recognized that because of the legal responsibility placed upon the Child Welfare Division for the licensing and inspection of child-caring institutions and boarding homes that this is properly a State expense. This function is, however, so interrelated with the aims and objectives of the Child Welfare Services program that a special consultant paid from Federal funds was secured on a temporary basis in October to give leadership and training in modern concepts and methods to the Supervisor permanently employed by the State and to participate in special conferences.

Almshouse study.—A study of children in almshouses has been carried on in cooperation with the University of Tennessee and the unit workers of the Department of Institutions and Public Welfare. Case consultants are following up with the unit workers all children reported to be in almshouses and those removed under Aid to Dependent Children in order to make case-work service available as individual situations require.

LOCAL SERVICES

The only Demonstration areas actually established to date have been the two County Demonstration Units in Lauderdale and Bradley counties. These are under the supervision of case consultants.

The worker in Lauderdale County has made very rapid progress in gaining community acceptance and developing awareness of the type of service she is qualified to render.

Community.—The Supervisor of the Bradley County Child Welfare Demonstration Unit, established in July of 1937, has demonstrated the value of having a children's worker in a county set-up by giving service on individual cases, until the Cleveland City Council had passed a resolution making her probation officer for the City of Cleveland. The County Judge and Superintendent of the State Training and Agricultural School have also recognized the

value of her service by accepting an offer to supervise children paroled from the institution. She has organized a small advisory committee of interested and carefully selected individuals who will work closely with her in interpreting the rights of every child to have his chance regardless of economic status. This committee is interested in awakening community awareness of the need of medical care and hospitalization for needy children and their families, which is quite acute in Bradley County; to provide foster homes suited to the individual needs of such children as are in need of foster care,—particularly as to some temporary detention quarters for children needing emergency care, such as a subsidized boarding home, in place of the county jail previously used; but emphasis is being thrown on the value of building up and conserving the child's own home for him as of major importance.



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